No. 2372

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

G. J. Buchler, Appellant,

vs.

W. W. Black, Frank L. Bell, and Sunset Copper Mining Company, a Corporation, Appellees.

TRANSCRIPT OF RECORD

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division

Kelly Printing Co., 90-92 Washington St., Seattle

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD

In the District Court of the United States for the Western District of Washington. Northern Division

G. J. Buchler, Complainant,

vs.

W. W. Black, Frank L. Bell, and Sunset Copper Mining Company, a Corporation, Defendants.

No. 2112

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[Clerk's Note:—Headings herein that are placed in brackets are not a part of the original record on file but have been inserted by the Clerk of the District Court for the purpose of identification.]

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. (In Equity.)

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL, and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Bill of Complaint

To the Judges of the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division:

G. J. Buchler, a citizen of the State of Pennsylvania, residing at Philadelphia, in said state, brings this his bill of complaint, against W. W. Black, a citizen of the State of Glens Falls, in said state, and against Sunset Copper Mining Company, a corporation organized under and by virtue of the laws of the State of Washington, and a citizen of the said State of Washington, defendants.

And thereupon, your orator complains and says:

I.

That he is now, and at all times hereinafter mentioned was, a citizen of the United States of America, and a citizen of and resident within the State of Pennsylvania.

II.

That the defendant, W. W. Black, is now, and at all times hereinafter mentioned was, a citizen of the United States of America, and a citizen of and resident within the State of Washington, Western District, Northern Division, thereof.

III.

That the defendant, Frank L. Bell, is now, and at all times hereinafter mentioned was, a citizen of the United States of America, and a citizen of and resident within the State of New York.

IV.

That the defendant, Sunset Copper Mining Company, a corporation, organized under and by virtue of the laws of the State of Washington, is now, and at all times hereinafter mentioned was, a citizen of and resident within the State of Washington, Western District, Northern Division, thereof.

V.

That certain mining property hereinafter described, and now held and claimed by the defendants, W. W. Black and Frank L. Bell, is the matter in controversy in this suit; that the matter in controversy greatly exceeds in value the sum of Three Thousand ($3000.00) Dollars, exclusive of all interest and costs.

VI.

That the defendant, Sunset Copper Mining Company, so organized and existing under the laws of the State of Washington, had and has its principal place of business, according to its incorporation laws, at Everett, in said state; that the defendant corporation was organized in 1897, with a capital stock of 1,000,000 shares at the par value of $1.00 per share; that later, to-wit, November 17, 1900, its capital stock was increased to 2,000,000 shares, the additional 1,000,000 shares also having a par value of $1.00 per share.

VII.

That the plaintiff is now, and at all times since the year 1902 has been a stockholder of the defendant corporation, owning and holding 58,250 shares of capital stock thereof; that this suit is in no manner whatsoever brought collusively for the purpose of conferring jurisdiction on a court of the United States, but that it is brought in this court in absolute good faith as the only court in which he can secure full and complete redress for the wrongs committed against him and hereinafter set out.

VIII.

That the said defendant corporation, prior to March, 1909, became the owner and holder of thirty-six certain valuable mining claims, known as Sunset, Glens Falls, Lebanon, Fourth of July Extension, Copper King Extension, Brown Bear, Star, Star No. 2, Fourth of July, Success, Miss Helen, Mountain Side No. 4, Mountain Side No. 2, Ravine Extension, Mountain Side No. 3, Mountain Side, Ravine, Mono, Mono No. 2, Lost Art, Ivy R., Hazel C., Black Bear Extension, Boundary, Lloyd B., Black Bear, W. H. B., Mabel, Copper King, River Side, Sunset Extension, Glens Falls Extension, Lebanon Extension, Crown Point, Crown Point No. 2, Crown Point No. 3, contiguous lodes mining claims, U. S. Mineral Survey No. 1026, bearing gold, silver and copper, situate, lying and being in Sections 35 and 36, Township 28 North, Range 10 East W. M.; Sections 1 and 2, Township 27 North, Range 10 East W. M.; Section 6, Township 27 North, Range 11 East W. M., unsurveyed in the Index Mining District, Snohomish County, Washington. Said claims are more particularly described according to the official plat thereof on file in the office of the Registrar of the United States Land Office at Seattle, State of Washington, a copy of which said description is hereunto attached, marked "Exhibit A" and thereby made a part of this bill of complaint; that the said defendant corporation, prior to March, 1909, also became the owner and holder in fee simple of the North one-half (N½) of Section One (1) of Township Twenty-seven (27) North, Range Ten (10) East W. M.; also one certain tramway from the said mining claims to the town of Index; also one certain bridge across the Skykomish River at the same place.

IX.

That the said defendant, W. W. Black, is now, and has been since about the year 1900 or 1901, one of the trustees of the said defendant corporation, Sunset Copper Mining Company, and has since that time acted as resident manager thereof, or has assumed so to act.

X.

That although the principal place of business was in Everett, in the State of Washington, all the corporate books of record and account, and all other papers connected with the management of the said corporation, were permitted to

be taken from the State of Washington, contrary to the statute of said state, and were sent to Glens Falls, State of New York; that said books of record and account and other papers of the said defendant corporation were thereafter kept and permitted to remain in the State of New York, where they were not available or open to inspection by the stockholders of the said corporation; that this was all done and permitted with the knowledge and full assent of the defendant trustee, W. W. Black, and the defendant, Frank L. Bell, and contrary to the laws of the State of Washington.

XI.

That a short time after the capital stock of the defendant corporation was increased to 2,000,000 shares, one W. H. Baldwin became the owner and holder of a majority of all the stock so issued; that the par value of the said stock was $1.00 per share; that the said stock was issued and sold to him, either directly from the defendant corporation for 2½c per share, or was transferred, assigned and sold to him by one John E. McManus, who was at that time the Secretary-Treasurer of the defendant corporation, and by M. Egbert Bros., and by other stockholders whose names are unknown to this complainant; that none of these stockholders had paid more than 2½c per share to the defendant corporation for the said stock so sold and assigned; that thereafter, to-wit, on the 7th day of October, 1903, the officers and trustees of the said defendant corporation wrongfully and fraudulently increased the capital stock of the said defendant corporation to 3,000,000 shares, without the knowledge or assent of the minority stockholders, of which this complainant is one, and without notice of a meeting of the stockholders called for that purpose, as required by the laws of the State of Washington; that this additional 1,000,000 shares was of the par value of $1.00 per share; that the said W. H. Baldwin, owning a majority of all the stock already issued, thereafter became the owner and holder of a large number of shares of this additional stock, so fraudulently issued; that he promised to pay to the said corporation the sum of 10c per share; that the said corporation sold and delivered these shares of stock directly to the said W. H. Baldwin; that although he promised to pay 10c per share, he actually paid not to exceed 2½c per share; that he continued to hold all the stock so issued to him until his death, about the year 1907; that at the time of his death he was the owner and holder of a total of 1,250,000 shares of the stock of the said

defendant corporation; that this said amount was a majority of all the shares of stock so issued and outstanding.

XII.

That the said defendants, W. W. Black, acting as one of the trustees, and as resident manager of the said company, and Frank L. Bell, acting as attorney for W. H. Baldwin up to the time of his death, and afterward acting for his own interests as a majority stockholder and as co-trustee of the said corporation, as hereinafter set out, conspired and confederated one with the other, and with the said W. H. Baldwin and one Henry C. McNutt, and other persons unknown to this plaintiff, for the purpose of defrauding the minority stockholders of said corporation out of their rights and interests, and for the purpose of manipulating and handling the business of the said corporation in such manner as to throw the said corporation into insolvency, and for the purpose of converting the assets of the said corporation to their own use and benefit, and to the injury of this plaintiff, and all other minority stockholders; that so conspiring and confederating, and in pursuance of such purpose, between the years 1902 and 1906 the trustees and officers of the said defendant corporation, acting under the influence, direction and control of the said defendants W. W. Black and Frank L. Bell, at attorney for W. H. Baldwin, caused to be executed at Glens Falls, in the said State of New York, by the said corporation, the following described notes, each and all of which said notes were signed by the defendant corporation, Sunset Copper Mining Company, by its President and Secretary, drawn in favor of Ellen C. Baldwin, the wife of W. H. Baldwin:

One note dated November 3, 1903, payable in 1 year for $5,000.00;

One note dated November 13, 1903, payable in 1 year for $1,000.00;

One note dated November 20, 1903, payable on demand for $1,000.00;

One note dated November 27, 1903, payable on demand for $3,000.00;

One note dated February 8, 1904, payable on demand for $5,000.00;

One note dated February 8, 1904, payable on demand for $5,471.00;

One note dated August 3, 1904, payable on demand for $4,263.60;

One note dated September 17, 1904, payable on demand for $4,649.50;

making a total of Twenty-nine Thousand Three Hundred Eighty-four and ten one-hundredths ($29,384.10) Dollars; that as security for these notes the trustees and officers caused to be executed two mortgages, one dated December 31, 1904, and one dated February 10, 1905, conveying all the real and chattel property of the said defendant corporation as security for the above described notes and the interest due thereon; that all of these notes were as a matter of fact executed without any consideration whatsoever; that this apparent indebtedness in favor of Ellen C. Baldwin, was created at a time when her husband, W. H. Baldwin, and her brother-in-law, Henry C. McNutt, and the defendant, W. W. Black, were members of the Board of Trustees; that all of this indebtedness was to the knowledge of both the defendants Black and Bell, collusive and fraudulent as against the minority stockholders and bona fide creditors of the corporation; that all these transactions were carried on outside the State of Washington and in the State of New York, and by and with the consent of the said defendant, W. W. Black, and during the time he was acting as trustee of the said defendant corporation; and by and with the consent and active participation of the defendant Frank L. Bell, acting as attorney for W. H. Baldwin.

XIII.

That in January, 1908, the annual meeting of the stockholders of the defendant corporation was held in the said defendant, W. W. Black's office, in Everett, in the State of Washington; that at the said meeting, in pursuance of the said conspiracy and fraudulent purpose, Henry G. McNutt, A. G. Sellingham, and John C. Davis, all residents of Glens Falls, State of New York, and E. M. Metzger and the defendant W. W. Black, both of Everett, State of Washington, were elected trustees; that the said John C. Davis was given, without any consideration, ten shares of stock by the said Henry C. McNutt, in order that the said Davis might be apparently qualified to act as a trustee for the said defendant corporation; that he was so elected by the

votes of proxies held by the defendant W. W. Black, in order that a majority of the trustees should be residents of Glens Falls, State of New York.

XIV.

That prior to the said annual meeting, the said Baldwin had died, leaving the said 1,250,000 shares of stock of the defendant corporation in the name of his wife, Ellen C. Baldwin; that thereafter, and about May, 1908, the said Mrs. Ellen C. Baldwin sold, assigned and transferred all her right, title and interest in the above mentioned notes and mortgages, and also the 1,250,000 shares of stock of the defendant corporation to Frank L. Bell, of Glens Falls, State of New York, her counselor and attorney at law; that each and all of said notes were so purchased by the said defendant Bell long after the date of their maturity; that the said defendant, Frank L. Bell, had been the attorney and counselor at law for W. H. Baldwin and his wife, Ellen C. Baldwin, for some years previous to this transfer; that he had full knowledge of the alleged loans that had been secured from the said Ellen C. Baldwin for the said defendant corporation; that he knew the large part of said claims so assigned by the said Ellen C. Baldwin were collusive and fraudulent, and were not properly due and owing from the said defendant corporation; that he knew the amount of stock so transferred was a majority of all of the stock issued and outstanding, and that after said transfer he would be able to control the said defendant corporation by acting in collusion with the said defendant, W. W. Black, and that said purchase was made in order to further the said fraudulent attempt to convert the property and assets of the said defendant corporation to their own use and benefit, and to the loss and injury of the minority stockholders.

XV.

That thereafter, further conspiring and confederating, and for the express purpose of converting all of the said assets of the said defendant corporation to the use of the said W. W. Black and the said Frank L. Bell, on November 30, 1908, suit was begun in the Superior Court of Snohomish County by the said defendant, Frank L. Bell, against the defendant corporation, which case is, according

to the records on file in the Clerk's office of the Superior Court for the said Snohomish County, the case of Frank L. Bell vs. Sunset Copper Mining Company, case No. 9510; that in the said complaint it was alleged that the defendant corporation was insolvent and unable to pay its debts, which were alleged to be more than $40,000.00; that it was further alleged that although the said defendant corporation had no cash in hand, the mining claims which were held by it were very valuable, and that the mining claims so owned would be forfeited if the assessments were not paid and development work done; that the said complaint asked that a receiver be appointed to care for the property, and also that he be authorized to sell all or such part of the property as should be found necessary to pay the indebtedness of the said defendant company, and also that the plaintiff be allowed to purchase the said property at a sale thereof; that although there was a pretended service of summons in this suit upon Henry C. McNutt as President, in Glens Falls, New York, there was as a matter of fact, no proper or sufficient service had on the defendant corporation; that there was no defense whatsoever made to the petition for a receiver; that on the 10th day of December, 1908, the court, Judge A. W. Frater of King County presiding, for and in the place of the said defendant, W. W. Black, signed an order appointing one John B. Fogarty temporary receiver, the said order reciting that it appeared that the complaint was duly served, and that no answer, demurrer or objections to the application for the receiver had been filed or made; that on the same day, on application of the receiver, the said Fogarty, an order was signed by Judge Frater that notice to creditors be given by publication to come in and file all claims with the receiver, on or before February 1, 1909, and that on or before February 3, 1909, said claims be filed with the Clerk of the Court for Snohomish County; that after the order appointing the temporary receiver had been made, one D. W. Locke, acting as attorney, claimed to enter his appearance for the defendant corporation, and thereafter entered into a stipulation with one John Sandige, acting as attorney for plaintiff, whereby it was agreed that the case should be tried on January 30th, 1909, before one F. E. Anderson as Judge pro tem; that the said Locke did not make a bona fide defense to said suit; that he did not investigate the merits of the case; that he did not know at the time who were the trustees of the defendant cor-

poration other than the said defendant Black; that he allowed one claim of the plaintiff to be presented uncontested, for the sum of Ten Thousand ($10,000.) Dollars, which even the trustees of the defendant corporation had not allowed; that he made no investigation as to the merits of any other claims; that as a matter of fact the said D. W. Locke had no proper authority to act as attorney for the defendant corporation, Sunset Copper Mining Company; that the records of the said case show that the court found as facts that all the allegations contained in plaintiff's complaint are true, and further found as conclusions of law that the plaintiff is entitled to all the relief prayed for in his complaint; that there was no objection offered by said D. W. Locke to these findings; that judgment was entered in favor of the plaintiff against the defendant corporation for the sum of Thirty-seven Thousand Five Hundred One and seventy-five hundredths ($37,501.75) Dollars; that the said judgment further ordered that plaintiff have a lien upon all the mining claims and other property of the said defendant corporation; that the said judgment further ordered that the said defendant corporation be adjudged insolvent, and that a permanent receiver be appointed, and that its assets be sold to pay this judgment; that this entire proceeding is null and void for the reason that no personal service was had on the defendant corporation, and that there was no service, or attempt at service, by publication; that all these proceedings were a part of the collusive and fraudulent scheme planned by and between the said defendants, W. W. Black and Frank L. Bell, whereby they intended to secure control of the property and assets of the said defendant corporation, for the purpose of converting the same to their own use and benefit; that the judgment herein rendered was procured solely through such fraud and collusion.

XVI.

That all the proceedings in this suit of Frank L. Bell vs. Sunset Copper Mining Company, case No. 9510, were had and taken in the Superior Court of the State of Washington, for Snohomish County, over which the defendant W. W. Black, was the duly elected and qualified presiding Judge; that he did not preside personally in said proceedings, but in pursuance of the fraudulent and collusive scheme, the said defendant W. W. Black called in certain Judges from various other counties to preside

at certain and different stages of the said suit and receiver's sale, as hereinbefore and hereinafter set out, to-wit: Judge A. W. Frater from King County, for the purpose of hearing the petition for the appointment of a temporary receiver, and for the purpose of signing an order for such receiver; Judge Lester Still, from Island County, for the purpose of hearing the petition for the order of sale of all the property of the said corporation, and the signing of said order of sale, as hereinafter set out, after the case had been tried before the said F. E. Anderson, as Judge pro tem, as hereinbefore set forth; Judge George A. Joiner, from Skagit County, for the purpose of hearing the application for an order confirming said sale, and the signing of said order, as hereinafter set out; that each one of these Judges was called in to preside at such different and distinct stages of the proceedings as to make it impossible for any one of them, while in the discharge of their duty, to discover the fraudulent and collusive scheme that was being carried on; that this plaintiff hereby disclaims any intention to reflect in any manner whatsoever upon the honesty, sincerity, or integrity of any one of the said Judges so presiding at the different stages of the said suit, but that they were so called in to act at such separate stages of the said suit by the said defendant, W. W. Black, in pursuance of, and in furtherance of the said collusive and fraudulent agreement between himself and the defendant, Frank L. Bell; that during all this time he was acting as one of the trustees, and as resident manager of the defendant corporation.

XVII.

That immediately after the securing of the said judgment for $37,501.75, it was filed with the receiver as one of the claims against the said defendant corporation; that the said defendant, Frank L. Bell, also filed as a claim a judgment secured by him in the Circuit Court of the United States, for the Northern District of New York, in the case of Bell vs. Sunset Copper Mining Company, No. 3554, which judgment was for the total sum, including interest to December 8, 1908, of Twelve Thousand Seven Hundred Sixty-seven and Fifty-seven hundredths ($12,767.57) Dollars; that the said defendant corporation was not doing business in the State of New York, and had not at any time complied with the laws of that state regulating

foreign corporations and giving such foreign corporations the privilege and right to do business in said state; that although there was a pretended service of summons in this suit, upon Henry C. McNutt, as President of the defendant corporation, in Glenn Falls, New York, there was as a matter of fact no sufficient service had on the defendant corporation, either personal or by publication; that there was no appearance or defense of any kind whatsoever made in said suit, and that said judgment was taken wholly by default, and wholly without service of any kind; that said judgment was secured through fraud and collusion, and is wholly void and of no effect; that it was and is an unlawful claim against the said defendant corporation, and should not have been allowed by the said receiver.

XVIII.

That the said defendant W. W. Black, filed a claim against the defendant corporation for a total of $10,923.21, of which amount the sum of $5,183.33 was claimed to be due him as salary for services rendered as general manager of the said defendant corporation, at the rate of $100.00 per month, from July 20, 1903, to October 1, 1906, and from September 1, 1907, to November 15, 1908; that said claim was both illegal and exhorbitant, and that said claim should not have been allowed by the said receiver.

XIX.

That although the total amount of claims filed was in excess of the sum of $64,000.00, the petitioner of the receiver asking for a sale of the said property, sets forth that claims to the amount of only $2,000.00 were filed with him within the time required by the said notice, and that the court had by an order of February 10, 1909, adjudged said claims to be valid and subsisting; that Lester Still, Judge from Island County, was called in by the said defendant Black to hear this petition; that after hearing the said petition, Judge Still signed an order of sale February 15, 1909, ordering the said property of the said defendant corporation sold, but that the receiver need require of the purchaser a payment of only $2,000.00 cash.

XX.

That after the above mentioned order was entered, and prior to the sale, one D. Rudebeck, a minority stock-

holder, by his attorney, Milo A. Root, entered a motion to postpone the said sale until a complete and bona fide investigation could be made as to the validity of the claims that had been allowed, and until holders of stock not fully paid up shall have been required to make such payments; and until the books and records of the corporation could be brought from New York by an order of the court, and placed under the jurisdiction of the said court; that said motion was supported by an affidavit that he, the said Rudebeck, was the owner of more than 1,000 shares of the stock of the defendant corporation; that it was unnecessary to sell the said property; that there were other assets of the corporation sufficient to pay all indebtedness; that a large amount of the indebtedness was unjust and illegal; that the books and records had been for some years out of the state, contrary to the laws of the State of Washington, and that it was thus impossible to ascertain what those in charge of the affairs of the corporation had been doing during those years; that the receiver could not justly and legally adjust and preserve the rights of creditors and stockholders, nor could the court do so until said books, records and accounts were brought within the State of Washington, and within the jurisdiction of the said court; that there was a sufficient amount due from the holders of stock to more than pay all indebtedness of the corporation, and that the books and records, if brought within the jurisdiction of the court, would show this fact.

XXI.

That although the said D. Rudebeck asked that the receiver be directed to bring action against Ellen C. Baldwin for her unpaid portion of the capital stock so owned by her, or her assignee, the said defendant Frank L. Bell, the said receiver was not directed to do so, or at all; that the said receiver reported that the said Ellen C. Baldwin did not owe the corporation any sum; that said report was not based upon a bona fide investigation, or upon any investigation at all.

XXII.

That notwithstanding this motion and affidavit, the said property of the defendant corporation was sold at the West front door of the Court House of Snohomish

County, in Everett, Washington, on March 20, 1909; that at this sale, the said defendant, W. W. Black and Frank L. Bell, bought the entire property of the defendant corporation for the sum of $2,000.00 cash and the cancellation of their claims against the defendant corporation; that at the time the said defendants, Black and Bell, bought this property at the receiver's sale, they were then acting as trustees of the said corporation; that in addition to acting as trustee, the defendant Bell was at the time of this sale, and had been for several years, the attorney for the said defendant corporation.

XXIII.

That thereafter, to-wit, on the 5th day of April, 1909, the said defendant Black called in Judge George A. Joiner, of Skagit County, to hear the application for an order confirming the said sale; that on the said 5th day of April, 1909, the said Judge Joiner, sitting for the said defendant W. W. Black, entered an order confirming the said sale to the said defendants, W. W. Black and Frank L. Bell; that this order and confirmation of sale was entered over the objections, supported by affidavits, of the said D. Rudebeck and one L. T. Reid, a minority stockholder.

XXIV.

That the said entire proceedings, from the time the said above mentioned suit of Frank L. Bell vs. Sunset Copper Mining Company, Case No. 9510, records of the Superior Court in and for Snohomish County, State of Washington, was instituted by the said defendant, Frank L. Bell, against the defendant corporation, were collusive and fraudulent; that the said defendants, Black and Bell, were both parties to such fraud and collusion; that they were both not only instrumental in securing such proceedings to be had and taken, but that they conspired and confederated one with the other for the purpose of conducting said suit, and for the purpose of converting the said property and assets of the defendant corporation to their own use and benefit and to the injury of this plaintiff; that so conspiring and confederating one with the other, they both not only had knowledge at all times, but actually directed the various steps taken in the proceedings which

resulted in the final sale of the property of the defendant corporation to them; that the said defendants, W. W. Black and Frank L. Bell, so conspiring and confederating, thus wrongfully and fraudulently attempted to become the co-owners, in consideration of the sum of $2,000.00, and the cancellation of their collusive and fraudulent claims, of all the property, of every description both real and personal belonging to and owned by the said defendant corporation; that these properties are exceedingly valuable because the mining claims have standing timber thereon which expert timber cruisers value at not less than $40,000.00 as the lowest estimate; that added to this amount is the very great value of the ore deposit thereon; that the price for which these properties were sold at the receiver's sale and purchased by the said defendant, W. W. Black, and the said Frank L. Bell, is absurdly low, and that the price so paid is not more than a nominal consideration therefor; that the said defendants, W. W. Black and Frank L. Bell, have made application for a United States patent to the said thirty-six mining claims described herein; that upon the granting of said patents by the United States Government, the said defendants, W. W. Black and Frank L. Bell, will become the apparent co-owners in fee simple of this entire property; that the value of the property in question will greatly exceed the sum of Forty Thousand ($40,000.00) Dollars, all of which sum will be lost to the defendant corporation, and to its stockholders, if the said receiver's sale is allowed to be good, sufficient and valid.

XXV.

That ever since the transfer and assignment of the 1,250,000 shares of stock by the said Ellen C. Baldwin to the said Frank L. Bell, the said defendants W. W. Black and Frank L. Bell, have owned and controlled a majority of the outstanding stock of the defendant corporation, and that they have been ever since said time, and still are in the actual control of the said corporation; that so conspiring and confederating one with the other, they have operated and controlled the said defendant corporation solely for their own interests, and totally disregarded the rights and interests of the said defendant corporation, and the rights and interests of the minority stockholders, of which this plaintiff is one; that the said defendants, W. W. Black and Frank L. Bell, in pursuance of their purpose

to convert the property and assets of the said defendant corporation to their own use and benefit, not only carelessly mismanaged the said corporation, and clearly neglected their duties as trustees and officers thereof, but also committed numerous acts of willful misconduct and breaches of trust; that in pursuance of such purpose, and because of their gross negligence and willful misconduct, other fraudulent and willful misconduct was allowed to be committed by certain other officers and trustees of the said defendant corporation, Sunset Copper Mining Company; that such fraudulent and willful misconduct on the part of the said certain officers and co-trustees could have been prevented if the said defendants, W. W. Black and Frank L. Bell, had given proper and ordinary care and attention to their duties as trustees and officers of the said defendant corporation.

In Consideration Whereof, and for as much as your orator has no sufficient remedy at law for the wrong done and threatened to be done, and is only relievable in a court of equity where matters of this kind are properly cognizable and reviewable; and to the end therefore that the defendants may, if they can, show why your orator should not have the relief prayed, and may make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of their remembrance, knowledge, information and belief, full, true, direct, and perfect answer make to the matters hereinbefore stated and charged, (but not under oath, an answer under oath being expressly waived), your orator prays that your Honors may decree that the proceedings had in the Snohomish County Superior Court in the case of Frank L. Bell vs. Sunset Copper Mining Company, be declared null and void and of no effect, and be set aside and cancelled; that the receiver's sale to the said defendants, W. W. Black and Frank L. Bell, under the proceedings in the said case, be set aside and cancelled; that a receiver be appointed to hold and take charge of all of the assets and property of the said corporation; that a bona fide investigation be made as to the merits of all claims against the said defendant corporation; that an accounting be had and taken of all the property and assets of every description owned by the said defendant corporation; that an accounting be had and taken of all moneys received and expended by the said defendants, W. W. Black and Frank L. Bell, during all the time or

times they acted as trustees or other officers of the said defendant corporation; that if necessary the property of the said defendant corporation, or such part thereof as may be necessary, be sold to pay the bona fide debts of the said defendant corporation; or

That the defendants, W. W. Black and Frank L. Bell, be enjoined and prohibited from making any sale, or contract of sale, for the said property, as owners thereof, with any person or persons, or corporation, whatsoever; and be enjoined and prohibited from any further use and benefit arising out of their apparent title to the said described property under the receivership sale; that the said defendants, W. W. Black and Frank L. Bell, be declared to be trustees for and in behalf of the said corporation and its stockholders, and be declared to hold all of the said property as trustees for the use and benefit of the said corporation, for its bona fide creditors and stockholders.

That your orator recover his costs and expenses in this action incurred, and that your orator may have such other and further relief as the equity of the case may require, and as to your Honors may seem equitable, proper and just.

May it please your Honors to grant unto your orator writs of subpoena of the United States of America, directed to the said Sunset Copper Mining Company, the said W. W. Black, and the said Frank L. Bell, and to such other defendants as shall, in the discretion of your Honors, appear necessary to the hearing and the termination of this cause, requiring and commanding them, and each of them, on a day certain to be determined by your Honors, to appear and answer to the several allegations in this bill contained, (but not under oath, answers under oath being hereby expressly waived), and to abide and perform such order and decree in the premises as to the court may seem proper and required by the principles of equity and good conscience.

O. C. MOORE,
GEORGE H. WALKER,

Solicitors and Counsel for the complainant, G. J. Buchler. Office and Post Office Address, 1601-3 Hoge Building, Seattle, King County, Washington, at which place service of all subsequent papers, except writs and processes, may be made.

5406. State of Pennsylvania, County of Philadelphia, ss.

Affidavit (Notary).

I, HENRY F. WALTON, Prothonotary of the County of Philadelphia and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do Certify, That Abram H. Smith, Esquire, before whom the annexed affidavit was made, was at the time of so doing a Notary Public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements, and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 20th day of March in the year of our Lord one thousand nine hundred and twelve (1912).

HENRY F. WALTON,

(SEAL) Prothonotary.

United States of America, Eastern District of Pennsylvania, ss.

On the 20th day of March, 1912, before me, personally appeared G. J. BUCHLER, personally known to me, who having been first duly sworn, deposes and says:

That he is the complainant in the above entitled action; that he has read the above and foregoing bill of complaint; that he knows the contents thereof, and that the same is

true of his own knowledge, except as to those matters which are therein stated to be on information and belief, and as to those matters, he believes it to be true.

(SEAL) G. J. BUCHLER.

Subscribed and sworn to before me the day and year first above written.

(SEAL) ABRAM H. SMITH,

Notary Public in and for the State of Pennsylvania, residing at Philada. My commission expires Jany. 11, 1913.

Indorsed: Bill of Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 26, 1912. A. W. Engle, Clerk. By S. Deputy.

United States of America. In the District Court of the United States for the Western District of Washington. (In Equity).

[Subpœna]

The President of the United States of America, to W. W. Black, Frank L. Bell and Sunset Copper Mining Company, a corporation, Greeting:

You are hereby commanded, That you be and appear in said District Court of the United States aforesaid, at the Court Room of said Court, in the City of Seattle, on the 6th day of May, 1912, to answer a Bill of Complaint filed against you in said Court by G. J. Buchler and to do and receive what the Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

Witness the Honorable C. H. Hanford, Judge of said Court, and the seal thereof, at Seattle, Washington, this 26th day of March, 1912.

(SEAL)

A. W. ENGLE, Clerk.
By
Deputy Clerk

MEMORANDUM PURSUANT TO RULE 12, SUPREME COURT, U. S.

You are hereby required to enter your appearance in the above mentioned suit on or before the first Monday of May, 1912, next at the Clerk's office of said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

A. W. ENGLE, Clerk.
By F. A. SIMPKINS,
Deputy Clerk.

United States of America, Western District of Washington, ss.

I hereby certify that I have served the within writ by delivering to and leaving a true copy thereof with W. W. Black personally at Everett, Western District of Washington, on the 27th day of March, 1912, and after due and diligent search I have been unable to find the within named Frank L. Bell and Sunset Copper Mining Company in this district.

JOSEPH R. H. JACOBY,
United States Marshal.
By LUDWIG FRANK, Deputy.

March 28th, 1912.
Fees: $3.75.

Indorsed: Subpoena. Filed in the U. S. District Court, Western Dist. of Washington, Mar. 28, 1912. A. W. Engle, Clerk.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division.

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL, and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Motion to Amend Bill of Complaint and Order Permitting Amendment

Now comes the complainant in the above entitled cause, and begs leave to file the following amendment attached hereunto, to the bill of complaint heretofore filed in this court on the 26th day of March, 1912.

O. C. MOORE,

GEORGE H. WALKER,

Solicitors and counsel for Complainant, G. J. Buchler.

The above motion to amend, coming on to be heard before this court on the 2d day of December, 1912, and the court being fully advised in the premises, and it appearing to the court that the complainant is entitled to file said amendment, it is hereby

Ordered that the complainant in the above entitled cause be, and he hereby is granted leave, without cost, to amend the bill of complaint in the said action by filing the annexed amendment thereto.

Done in open Court this 13th day of December, 1912.

CLINTON W. HOWARD, Judge.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. In Equity.

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL, and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Amendment to Bill of Complaint.

Now comes the complainant, and by leave of the court first had and obtained, amends his bill in the following manner:

After the word "decree" on the 17th line of page 18 of the bill of complaint, strike out the words, "that the proceedings had in the Snohomish County Superior Court in the case of Frank L. Bell vs. Sunset Copper Mining Company, be declared null and void and of no effect, and be set aside and cancelled; that the receiver's sale to the said defendants, W. W. Black and Frank L. Bell, under the proceedings in the said case, be set aside and cancelled."

Also on the 3d line of page 19, strike out the word "or."

O. C. MOORE,

GEORGE H. WALKER,

Solicitors and counsel for Complainant G. J. Buchler.

Indorsed: Motion to amend bill of complaint and order permitting amendment. Filed in the U. S. District Court, Western Dist. of Washington, Dec. 13, 1912. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. (In Equity).

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL, and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Answer of Defendant W. W. Black

To the Judges of the District Court of the United States, For the Ninth Circuit, Western District of Washington, Northern Division:

Now comes the defendant W. W. Black, and for his answer to the bill of complaint of the plaintiff, respectfully shows and alleges as follows:

I.

As to paragraph I of the bill of complaint, the said defendant admits that the said complainant is a resident of the State of Pennsylvania, but this defendant has no information as to whether or not the said complainant is a citizen of the United States or a citizen of Pennsylvania and therefore denies the same.

II.

That said defendant admits the allegations in paragraph II, III, IV, V, VI, VIII, XX and XXIII of said complaint.

III.

As to the allegations contained in paragraph VII, the said defendant admits that the plaintiff is now and at all of the times since the year 1902, been a stockholder of the defendant corporation, owning and holding 58,250 shares of capital stock thereof; but this defendant denies that said suit was brought without collusion for the purpose of con-

ferring jurisdiction in a Court of the United States, and this defendant denies that this action is brought in good faith.

IV.

That as to paragraph IX of said complaint the defendant admits that he was a trustee of the Sunset Copper Mining Company, from about the year 1900 or 1901 and up to, including March 1909, and that from about said year 1901 the said defendant was resident manager of said corporation, but this defendant denies that since March 1909 that he has been acting as either trustee, or as manager or assumed so to act.

V.

That as to paragraph X of said complaint, this defendant admits that the principal place of business of said Copper Mining Company was in Everett, Washington, and admits that the corporate books of record, to-wit: The stock books and certificates of stock and minute books were permitted by this defendant to be taken from the State of Washington, and were sent to Glens Falls, State of New York; but this defendant alleges that said minute books, stock books were sent to New York at the request of the President of said company, for the purpose of enabling the president to examine the same and that the same were kept for some time and finally returned to the office at Everett, Washington; this defendant alleges that said books were sent to New York for temporary purposes only; the said defendant denies that any other papers, except the minute books and blank certificates of stock were sent out of the State of Washington or permitted to be taken from the State of Washington; that as to the allegations contained in said paragraph, that these books were not available or open to inspection; this defendant has no knowledge as to whether they were open to inspection in New York and therefore denies that they were not open to inspection; the defendant denies that the taking of said books out of the State of Washington was contrary to the laws of said State, and defendant admits that the minute books and blank certificates of stock were sent to the State of New York with the assent of said W. W. Black and said Frank L. Bell.

VI.

The said defendant answering paragraph XI of said complaint admits that the capital stock of the defendant corporation was increased to Two Million shares, but denies that W. H. Baldwin became the owner and holder of a majority of the stock so issued or any stock in excess of One Hundred Thousand shares, and admits that the principal value of said stock was One Dollar per share; and denies that the defendant corporation sold to W. H. Baldwin any shares of stock at Two and one-half cents per share; or that John E. McManus, the Secretary-Treasurer of the defendant corporation, sold stock to W. H. Baldwin; the said defendant admits that about the 7th of October, 1903, the capital stock of said defendant corporation was increased to Three Million shares, but denies that the same was done contrary to law, but on the contrary alleges that said increase was made in compliance with the laws of the State of Washington, and alleges that notice was duly given the stockholders of the meeting called for said purpose provided by law; the defendant admits that said One Million shares, was of the par value of One Dollar per share and the said defendant denies that said W. H. Baldwin became the owner and holder of any of the shares of said stock in excess of Twenty-five Thousand shares; that whatever shares the said Baldwin did obtain from the company he paid the said corporation at the rate of Ten cents per share; the defendant admits that the said W. H. Baldwin held all the stock issued to him until his death, about the year 1907 but denies that the defendant at the time of his death was the holder of One Million Two Hundred Fifty Thousand shares of stock or any number of shares exceeding One Hundred Seventy-five Thousand shares; the defendant alleges that the said W. H. Baldwin acting as agent for his wife, Ellen C. Baldwin, purchased Two Hundred Thousand shares of the increase, authorized on or about the 7th day of October, 1903, and that the said Ellen C. Baldwin paid Two and one-half cents per share for said stock and that she also obtained from John E. McManus, Secretary-Treasurer of defendant corporation, at or near the same time, a large number of shares of stock, approximately Five Hundred Thousand shares, at the rate of Two and one-half cents per share and that the remaining shares of said One Million Two Hundred and Fifty Thousand shares of stock, men-

tioned in said paragraph XI, was purchased from various stockholders, including Egbert brothers, which stock had been previously issued by said company for a valuable consideration to the said stockholders; the said defendant alleges that said stock was sold at the market value of said stock at said time; the said defendant alleges that the said stock could not be sold to any other person at as high a price as so paid by Ellen C. Baldwin, and that the company had no other means of obtaining money to pay its debts and to develop its property and that it could not have sold its stock to any other person than to Ellen C. Baldwin for as much as Two and one-half cents per share and that such sale of Ellen C. Baldwin was for the best interests of said company, and was made in the utmost good faith by the trustees of said corporation; the defendant alleges that at the time of the sale of Five Hundred Thousand shares aforesaid, to Ellen C. Baldwin, the trustees of said defendant corporation gave the said W. H. Baldwin an option to purchase Five Hundred Thousand shares of said last increase of One Million shares at the price of Ten cents (10c) per share, but that said W. H. Baldwin did not fully use his option to purchase said stock, but that he did purchase a few shares, not to exceed Twenty-five Thousand shares at said price of ten cents per share and the defendant alleges that whatever other stock the said W. H. Baldwin owned or had at the time of his death, was obtained from other stockholders, not mentioned in said complaint, none of which was purchased from said company; the defendant admits that the said W. H. Baldwin and Ellen C. Baldwin, his wife, owned more than a majority of all shares of stock issued and outstanding.

VII.

That as to paragraph XII of said complaint this defendant denies that the said defendant and said Frank L. Bell or W. H. Baldwin, or each, all or any of them conspired and federated with each other, or with the said W. H. Baldwin and Henry C. McNutt, or any other persons or any of them for the purpose of defrauding the minority of the stockholders of said corporation or for the purpose of manipulating or handling the business of said corporation so as to throw the same into insolvency or for the purpose of converting the assets of the said cor-

poration to their own use and benefit and to the injury of the plaintiff or any other person and denies that they did anything for the purpose of injuring the corporation or any of its stockholders or to gain any benefit whatever, except to increase the value of all of the stock of said corporation, either between the years 1902 and 1906 or at any other time, but on the contrary said defendants allege that every act they did in connection with said corporation, was to protect the interests of the minority stockholders and every other stockholder and for the purpose of advancing the interests of said corporation; the said defendant admits that the notes described in said complaint were signed by the defendant corporation in favor of Ellen C. Baldwin, who was the wife of W. H. Baldwin, and that the mortgages described, were executed, but denies that said notes or mortgages were executed without any consideration whatever, but said defendant alleges that the said corporation received cash to the amount of notes mentioned and that said cash was actually expended by said company under the direction of this defendant in developing the property of the said company to the best of his ability and under the direction and by the authority of the Board of Trustees of said defendant corporation; that said money was used in making improvements upon the property of defendant corporation described in the complaint and that all of the said money was used in making improvements in said company, and that all of said improvements were made upon the advice and direction of skillful mining engineers and was made honestly for the interest of the company and that the consideration for the execution of said notes and mortgages was actual cash to the full amount of the sums mentioned in the said several notes and this defendant denies that they were any collusive or fraudulent actions on the part of the said defendants or by any of them; and this defendant alleges that at all times herein mentioned with reference to the transactions complained of in the complaint, the said defendant acted according to his very best judgment in the interests of all of the stockholders of said company and in the interests of said company having an earnest purpose at all times to promote the interests of said company and its stockholders and the said defendant alleges that at all of the times the other trustees acted in the same manner so far as known to this defendant; said defendant admits that the persons named in said paragraph were acting as trustees and

alleges that all notes, except one for $4263.60 and one for $4649.50 were executed in Everett, Washington, and admits that the others were executed in New York; defendant alleges that the mortgage dated December 31, 1904, was executed in Washington and the other mortgage was executed in New York.

VIII.

That as to paragraph XIII of said complaint, said defendant admits that the annual meeting of the stockholders was held in his office as alleged in said complaint, and admits that the persons named in said paragraph were elected trustees, but denies that same was in pursuance of any conspiracy or was made for any fraudulent purpose and that the said defendant admits that said persons were elected by votes of proxy held by this defendant, together with other stockholders voting personally and that a majority of said trustees were then residents of Glens Falls, New York.

IX.

That as to paragraph XIV the said defendant admits the death of said Baldwin and that One Million Two Hundred Fifty Thousand shares of stock of said defendant corporation was in the name of Ellen C. Baldwin; that said stock, notes and mortgages were sold and assigned to Frank L. Bell, who was the counselor and attorney at law of the said Ellen C. Baldwin and W. H. Baldwin in his life time and this defendant believes that the said Frank L. Bell had full knowledge as to the notes and mortgages therein mentioned, but this defendant admits that the said Frank L. Bell had full knowledge as to the notes and mortgages therein mentioned, but this defendant denies that the said Frank L. Bell had any knowledge that the claims assigned by Ellen C. Baldwin were collusive or fraudulent, but admits that the said Bell knew the amount of stock so transferred was a majority of all of the stock issued and outstanding, and knew that he would be able to control the said defendant corporation, and this defendant denies that said purchase was made to further that fraudulent purpose or any fraudulent purpose whatever, or for the purpose of injuring any stockholders.

X.

That as to paragraph XV the said defendant denies any conspiracy or confederating of said defendant and the said Frank L. Bell at any time, for the purpose of converting the said assets of the defendant corporation for the use and benefit of said defendants Black and Bell or either of them; and further answering paragraph XV of said complaint, this defendant admits that a suit was brought in the Superior Court by Frank L. Bell against the Sunset Copper Mining Company, being cause No. 9510, and that it was alleged that the defendant corporation was insolvent, and that its debts were more than $40,000.00; that it had no cash and that the mining claims were very valuable, and that the mineral claims so owned would be forfeited if the assessments were not paid, and that the plaintiff asked that a receiver be appointed with authority to sell the property, pay the debts and to purchase the property at a sale thereof; and alleges that the said Henry McNutt was served with a summons and that a hearing was had in said case by the Court, Judge A. W. Frater of King County presiding, and that the order was made in said case as alleged and that said order was signed as alleged by said Judge Frater; said defendant alleges that D. W. Locke was employed by the Sunset Copper Mining Company as its attorney and did put in his appearance for the defendant and duly entered into stipulation, whereby it was agreed that the case should be tried on January 30th, 1909, before F. E. Anderson, as Judge pro tem., and said defendant admits that the records of said case show that the Court found that all the allegations of the plaintiff's complaint were true and made conclusions of law as stated in said paragraph, and that there was no objection offered by D. W. Locke to these findings and the judgment was entered as stated therein, and admits that there was no service by publication, but this defendant alleges that there was no valid defense possible and alleges that said D. W. Locke examined the notes, mortgages and papers, and found that there was no legal valid defense and that this defendant was made a witness in said case and said Locke examined him as to the execution and as to the consideration, all of which was done before the Court; and said defendant denies that no proper or sufficient service had been made on the defendant corporation, but alleges on

the contrary that the service was actually made on Henry C. McNutt in Glens Falls, New York; the said defendant alleges that he was the general manager of said corporation and was the only trustee at said time residing in the State of Washington and that D. W. Locke was employed as attorney for said company with the instructions to look after the interests of said corporation, and that this was done in the utmost good faith; the said defendant admits that an order for notice to creditors was made as stated in said paragraph and that Judge A. W. Frater signed an order appointing John B. Fogarty temporary receiver and that the said Judge Frater was acting instead of this defendant and admits that said order contained the recitations stated in said paragraph and that notice to creditors was ordered by Judge Frater, as stated in said paragraph and that D. W. Locke, acting as attorney, claimed to enter his appearance for the defendant corporation as stated in said paragraph and entered into the stipulations mentioned in said paragraph, but denies that said Locke did not make a bona fide defense to said suit and that he did not investigate the merits of the case, but alleges on the contrary that he did so; the said defendant denies that said D. W. Locke had no proper authority to act as attorney for the defendant corporation, but on the contrary alleges that he was duly authorized to act as attorney for said corporation; said defendant admits that the records of said case show that the Court made findings of facts and conclusions of law, as stated in the said paragraph and admits that there was no objection offered by said Locke and that judgment was entered, as stated in said paragraph, but denies that said proceeding is null and void for the reason set forth in said paragraph, or for any other reason and denies that there was any collusive or fraudulent scheme of any kind between the said defendants and denies that judgment mentioned, was rendered or procured through any fraud or collusion; the said defendant further alleges that at the time of the commencement of said action in the Superior Court of Snohomish County, being numbered 9510; a copy of the summons and complaint was duly served upon H. C. McNutt, who was then the President of the Sunset Copper Mining Company; that said service was made in the State of New York, and at the said time the said H. C. McNutt made an acknowledgement in writing as follows, to-wit: "The above named defendant by H. C. McNutt, the presi-

dent, does hereby acknowledge due and timely service of the foregoing summons and complaint. Dated November 30th, 1908. H. C. McNutt, President of Sunset Copper Mining Company, a corporation.", which written acknowledgement was attached to the summons and complaint in said action numbered 9510; and said defendant alleges that all of his actions in connection with any of the proceedings mentioned in said paragraphs were done in good faith and for the purpose of serving the interests of all of the stockholders of said corporation.

XI.

That as to paragraph XVI of said complaint, the said defendant admits that all the proceedings mentioned in the suit in said paragraph were had in the Superior Court of the State of Washington for the County of Snohomish, over which this defendant was the presiding Judge, and admits that he did not preside personally in said proceedings; the said defendant admits that he called in those certain Judges mentioned in said paragraph, from various Counties to preside at said time and different stages of said suit and receiver's sale and that Judge Frater of King County, Washington, was called in for the purpose of hearing the petition and for the appointment of temporary receivers and for the purpose of signing an order for such receivers and that Judge Lester Still from Island County, was called in for the purpose of hearing the petition for the order of sale of all of the property of said corporation and the signing of said order of sale after the case had been tried before F. E. Anderson, as Judge pro tem and that Judge A. Joiner from Skagit County, was called for the purpose of hearing the application for an order confirming said sale and deciding of said order, but this defendant denies that said Judges were called in, in pursuance of any fraudulent or collusive scheme or for the purpose of preventing the Judges from discovering any fraudulent or other scheme; and this defendant alleges that all of these things were done without the actual knowledge of said Frank L. Bell and done only for the reason that it was more convenient to get these Judges than others by reason of the fact that the Judges were difficult to get and the defendant alleges that the several Judges, aforesaid, were made fully cognizant of the facts and circumstances in connection with said case, and admits that this defendant was a trustee and manager of said defendant corporation.

XII.

That as to paragraph XVII of said complaint this defendant admits that after the securing of the said judgment for $37501.75 it was filed with the Receiver as one of the claims of said defendant corporation and that said defendant Frank L. Bell filed as a claim a judgment secured by him from the Circuit Court of United States for the Northern District of New York for the sum of $12,767.57 as alleged in said paragraph, but as to whether the said defendant corporation had not complied with the laws of New York regulating corporations, this defendant has no information and therefore denies the same and this defendant admits that a service of summons was made upon Henry C. McNutt as President of defendant corporation in Glens Falls, New York, but alleges that said McNutt admitted in writing due and timely service of summons and complaint, but as to whether there was publication of summons or appearance or any defense of any kind in said suit and as to whether said judgment was taken by default, this defendant has no information and therefore denies the same; this defendant denies that said judgment was secured through fraud and collusion and denies that it was an unlawful claim against said defendant corporation, and denies that said judgment was void and denies that said claim should not have been allowed by said receiver.

XIII.

That as to paragraph XVIII of said complaint this defendant admits that he filed a claim against the defendant corporation for a total of $10,923.21 of which amount the sum of $5,183.33 was claimed to be due as salary for services rendered as general manager and as secretary of said defendant corporation at the rate and for the time mentioned in said paragraph, but denies that the said claim was illegal or exorbitant or that said claim should not have been allowed by said receiver, but on the contrary alleges that the said claim was proper and legal and that the said defendant had been employed by the Board of Trustees of said defendant corporation to act as secretary and general manager of said corporation and that he faithfully performed his duties as such and that the amount

claimed was reasonable and just and that the other part of said sum of $10,923.21 was for money actually advanced by this defendant.

XIV.

That as to paragraph XIX said defendant admits that the total amount of claims filed was in excess of $64,000.00 and admits that one petition of the receiver set forth that claims to the amount of $2,000.00 were filed with him within the time required by the said notices, but alleges that in another report he showed that claims in excess of $64,000.00 had been filed and alleges that same were by the court adjudged to be valid claims and admits that the court had by its order mentioned in said paragraph adjudged claims to be valid and subsisting; this defendant admits that Judge Lester Still from Island County was called in by this defendant to hear the petition and that after said Lester Still had heard said motion he signed the order mentioned in said paragraph and admits that by such order, said receiver was only required to require a payment of only $2,000.00 cash and alleges that said order provided that the remaining of the bid could be paid by the claims proved before said receiver; this defendant alleges that the reason for requiring payment of cash was to have a sufficient amount of cash on hand to pay the receiver and the costs and expenses of the receiver-ship and of such sale.

XV.

That as to paragraph XXI, this defendant admits that the said E. Rudabeck requested that the receiver be instructed to bring an action against Ellen C. Baldwin for the unpaid portion of the capital stock so owned by her or her assignee Frank L. Bell; this defendant admits that said receiver was not directed so to do; and this defendant admits that said receiver reported that the said Ellen C. Baldwin did not owe the said corporation any sum and this defendant denies that said report was not based upon a bona fide investigation or upon any investigation at all, but alleges that the said receiver secured information as to the condition of affairs and as to the conditions of the estate of Ellen C. Baldwin, and he re-

ported in open court to the Judge that there was no legal claim of said corporation against Ellen C. Baldwin.

XVI.

That as to paragraph XXII of said complaint, said defendant admits that said property was bid in by the said Black and Bell and admits that the entire property of defendant corporation was purchased for the sum of $2,000.00 cash and the cancellation of $38,000.00 of claims against the defendant corporation, but denies that the remaining portion of the claims were cancelled; this defendant admits that he was at the time of receiver's sale a trustee of said corporation, but denies that Frank L. Bell was a trustee at that time, and denies that defendant Bell had been for some years attorney for said defendant corporation, but alleges that said defendant Bell had been during the life of W. H. Baldwin the attorney for said corporation, acting for it about all matters in the State of New York.

XVII.

That as to paragraph XXIV this defendant denies that there was any collusive or fraudulent action between the said defendant and Frank L. Bell, and denies that they were parties to any fraud or collusion of any kind whatsoever, the said defendant admits that he had knowledge of all the steps taken in connection with said suit and of the various steps taken in the proceeding in the sale of the property of defendant corporation to them but denies that they wrongfully or fraudulently became the coowners, but admits that in consideration of the sum of $2,000.00 in cash and cancellation of their claims amounting to $38,000.00, all of the property of said defendant corporation were conveyed to the said Black and the said Bell; this defendant admits that the properties are valuable and a number of said claims have standing timber thereon, but has no knowledge whether expert timber cruisers valued the same at no less than $40,000.00, or at any sum and therefore denies the same, but denies that the price for which the properties were sold at the receiver's sale and were purchased by said Black and Bell was absurdly low, but alleges that on the contrary the bid for said sale

was more than could be obtained for said property at any time since said sale and alleges that said sum of $40,000.00 was more than the market value of said property was at said time or has been at any time since said time; the said defendant denies that said Frank L. Bell had any definite knowledge as to the several stages taken in said action, but alleges that he was informed in a general way of the results of said proceeding and as to how the proceedings were progressing; said defendant admits that the said Black and Bell have made application for United States Patent and the said defendant will become the apparent co-owners, in fee simple of this entire property, but denies that the value of the property in question will exceed the sum of $40,000.00.

XVIII.

That as to paragraph XXV, this defendant admits that the said Black and Bell have owned a majority of the outstanding stock of the defendant corporation and are now the owners of the same, but denies that they conspired and confederated together solely for their own interests and disregarded the rights and interests of said defendant corporation, but alleges on the contrary, that this defendant was careful to regard all the rights and interests of the minority and other stockholders and the said defendant denies that the said property was carelessly mismanaged and denies that they neglected their duties as trustees and officers thereof and denies that they committed any misconduct or breaches of trust and denies that any fraud and misconduct was allowed to be conducted by other officers of said company; but alleges on the contrary that both the said Black and Bell did all they could to manage the business of said corporation wisely and honestly, and this defendant alleges that he was particularly careful at all times to look after the interests of said corporation, and that he did so until it was impossible to raise any money in any way to pay the debts of said corporation or to develop said property and alleges that at all times he was anxious to and did look after the interests of the minority stock of said corporation and endeavored to obtain money in every possible way, with which to improve the property and to pay its debts.

XIX.

For a separate and further defense the said defendant alleges that one N. Rudebeck, a minority stockholder of said Sunset Copper Mining Company, entered a motion to set aside the sale of the property of said company by said receiver, as alleged in the bill of complaint herein. That said motion was made in behalf of himself and all other stockholders and was denied by the court about the month of March 1909, and said order was not appealed from and in unreversed and the decision thereon is res judicata thereon and binding upon the complainant in this suit and by reason thereof plaintiff cannot maintain this suit, nor can he attack said order by this, a collateral action; and said defendant further alleges that after the sale of said property by the receiver of said Court, N. Rudebeck and other stockholders appeared in said court and objected to the confirmation of such sale, objecting and alleging substantially the allegations contained in the complaint in this action, and the court duly heard the same, passed upon the same, and overruled their objection and confirmed said sale, all of which was done in the Superior Court of the State of Washington, in and for the County of Snohomish, being the court in which the receiver has been duly appointed and in which said proceedings were duly pending, and by reason of the foregoing, the matter is res judicata and this plaintiff cannot maintain this suit nor attack said order by this, a collateral action.

XX.

For a separate and further defense herein, defendant alleges that now, and at the time plaintiff's alleged cause of action arose and accrued, the laws of the State of Washington, in substance, provided "The Superior Court in which a judgment has been rendered or by which or the Judge of which a final order has been made, shall have power, after the time at which said judgment or order was made, to vacate or modify such judgment or order for fraud practiced by the successful party in obtaining the judgment or order upon a petition filed in the original case within one year after the judgment or order was made." That this suit is not a petition in the original case and was not commenced within one year after the rendition of said judgment and the

taking and filing of said order under the laws of the State of Washington, the alleged cause of action set out in the complaint herein is barred by the Statute of Limitation and plaintiff has no right to maintain the same.

XXI.

As a separate and further defense herein, defendant alleges that now and at the time plaintiff's alleged cause of action arose and accrued, the laws of the State of Washington, in substance provided, "That actions for relief upon the ground of fraud must be commenced within three years after the cause of action thereon shall have accrued," and the alleged cause of action set forth in the complaint accrued more than three years before the time of the commencement of this suit by plaintiff; that plaintiff knew of the taking of said judgment and order at the time of the taking of each thereof and at and from such time has had full knowledge of all of the same and of all the matters alleged in the complaint herein, and this suit is barred by said limitation statute.

XXII.

As a separate and further defense herein this defendant alleges that at the time plaintiff's alleged cause of action arose and accrued the laws of the State of Washington in substance provided and ever since said time have provided and do now provide that for any of the matters complained of in the complaint, action shall be commenced within two years after the cause of action shall have accrued; that Section 165 of Remington & Ballinger's Annotated Codes and Statutes of Washington provides that an action for relief not hereinbefore provided for shall be commenced within two (2) years after the cause of action shall have accrued, and defendant further alleges that complainant is seeking to have the defendant W. W. Black declared a constructive trustee of said property on the ground that he was a director of said company when he purchased the property at said receiver's sale, and defendant alleges that such a proceeding is an action for relief not otherwise provided for in the laws of Washington, and that it therefore falls within Section 165 of Remington & Ballinger's Code above cited;

that the alleged cause of action set forth in the complaint did not accrue within two years next before the commencement of this suit by plaintiff, and that the plaintiff knew of all of the facts set forth in the complaint and had full knowledge of the same at all the times mentioned in the complaint herein and this suit is barred by said limitation statute.

XXIII.

That said complainant was guilty of laches in bringing his alleged cause of action and that his alleged cause of action and bill of complaint is stale; that said complainant knew of the acts and transactions alleged in his complaint at or about the time of their happening; that said complainant had knowledge of the increase of capitalization of said corporation of the sale of stock to said Ellen C. Baldwin and to said W. H. Baldwin and of the terms of sale, of the giving of the notes and mortgages to Ellen C. Baldwin, of the bringing of the foreclosure suit in Snohomish County, of the receivership of said corporation, of the sale of said property, of the objections filed by said Rudebeck, of the confirmation of the sale to said Black and Bell, and that said Black was a trustee at the time of the purchase, and of the other transactions at or about the time they occured; that said complainant knew the defendants were expending funds after the purchase for the development and patenting of said property; and defendant further alleges that all the court proceedinigs of Snohomish County, alleged in said bill of complaint were duly recorded as provided by law, in the County where said mining property is situate, and that said complainant had constructive knowledge as well as actual knowledge of said transactions; and this defendant alleges that if complainant had any cause of action against the defendant herein, he should have brought same before defendants Black and Bell had expended large sums of money in holding the property as alleged herein; that there is no valid excuse for the delay of said complainant and that even if complainant ever had a cause of action, which this defendant denies, that his delay had prejudiced and injured this defendant; this defendant alleges that complainant's cause of action is barred by inexcusable delay and laches.

XXIV.

For a separate and further defense, herein, this defendant alleges, that the Court is without jurisdiction to hear and try this cause, for the reason that it appears upon the face of the bill that this suit is brought by plaintiff for the benefit of the Sunset Copper Mining Company, a corporation of the State of Washington. That an action therefor must be brought by said Company and can only be brought by a stockholder thereof, after such stockholder has demanded that such Company bring action, and upon its refusing to do so and that complainant herein has never demanded of said corporation that it bring this action.

XXV.

That previous to the month of May, 1908, the said Ellen C. Baldwin had loaned said Sunset Copper Mining Company, money, for which said Company gave its notes as follows:

One dated November 3rd, 1903, payable in one year from the date thereof, for	$ 5,000.00
One dated November 13th, 1903, payable in one year from the date thereof, for	1,000.00
One dated November 20th, 1903, payable on demand for	1,000.00
One dated November 27th, 1903, payable on demand for	3,000.00
One dated February 8th, 1904, payable on demand for	5,471.00
One dated February 8th, 1904, payable on de mand for	5,000.00
One dated September 17th, 1904, payable on demand for	4,649.50
Total	$29,384.10

That all of said notes represented actual cash advanced by her to said Company and substantially all of the money advanced to said Company and represented by said notes actually passed through the hands of this defendant, who had knowledge thereof. All of said money was advanced by her to pay debts of said company, install machinery and mining equipmentand to do the assessment work to hold said company's mining claims and, to the knowledge of this defendant substantially all of said money was expended by this defendant solely and wholly for the use and benefit of the said Sunset Copper Mining Company and was expended honestly to further the interests of the said Sunset Copper Mining Company and to improve its property to the best of the ability of the said defendant, and said defendant alleges and he is informed and believes and therefore alleges to be the fact that all of the said indebtedness was for a good and valuable consideration assigned to Frank L. Bell, his co-defendant. Said defendant alleges that all of the money not used for actual improvements upon said property, was expended for necessary expenses connected with the business of said corporation and was inconsiderable in amount.

XXVI.

That the complainant herein after the assignment of the indebtedness to Frank L. Bell persistently threatened to bring suit charging fraud and finally came to the City of Everett at one annual meeting, in January, 1908, and threatened that if he were not elected a director of said company that he would bring suit alleging fraud and would thereby annoy the company so that defendant could not raise any money; that he informed this defendant that he had so notified Frank L. Bell that he would do the same and that Frank L. Bell had instructed him that the whole matter lay in his hands and that he could elect him if he desired so to do. Previous to said meeting the holders of a large majority of the stock of the Sunset gave this defendant proxies authorizing him to vote for said complainant as a director or trustee in said Sunset Copper Mining Company if he deemed it advisable so to do; that at said meeting said de-

fendant notified said complainant that he believed that his sole purpose was to annoy the company and make himself such a nuisance as to compel the buying of complainant's stock by persons interested in said company, and that for those reasons he did not think it advisable to have him made a trustee or director, and thereupon refused to vote for him, but the said complainant was given access to the use of books and accounts of said company with the assistance of a clerk, to-wit, Ralph C. Bell, now one of the Judges of the Superior Court of Snohomish County, Washington, and he did go over the books and accounts and affairs of said company and did go upon the property of said company and examine the improvements thereon and became fully and absolutely acquainted with all of the affairs of said company, and thereupon expressed himself as being satisfied that the affairs of said company had been properly and rightly managed; that he thereafter desired to obtain the interests of Baldwin and Frank L. Bell in, to and concerning their indebtedness mentioned in said complaint and in this answer, and all of the stock in said company of said Baldwin and Bell and endeavored to raise the money to purchase said property and obtained a written option for the same, but failed to obtain the money. That at said time the said defendant notified said complainant that there was great danger of this indebtedness being pushed and judgment obtained and the property sold and discussed with him the best methods of avoiding the same; that this defendant alleges that said complainant was fully and absolutely informed at that time by an examination of the books and by seeing the improvements made upon said property and knew absolutely that all of the allegations except as admitted by this defendant were false, and this defendant alleges that this suit is brought for no other purpose than to annoy the said defendants and to hinder and delay the said defendants in improving, developing or disposing of said property, and that complainant is acting in connection with stockholders residing in this state and brings this suit in his own name for the purpose of giving this Court jurisdiction.

XVII.

That soon after the said Frank L. Bell had become the owner of said notes, mortgages and other claims of said Ellen C. Baldwin, that said Frank L. Bell notified this defendant that he was going to proceed to foreclose the mortgages and to collect his indebtedness because he did not believe that the company could or would pay the same and it was necessary for him to bring such action; that this defendant went to the City of New York and met the said Frank L. Bell and went over the whole situation with him and urged him to give the company time, this defendant believing at said time that if reasonable time were given that some one could be procured to purchase the interest of said Frank L. Bell and who would furnish necessary money to the company to develop the property of said company; that this defendant so informed Frank L. Bell, but said Frank L. Bell then notified this defendant, who was then acting in the interests of said company, that he did not believe that money could be procured and that in order to protect his interest money should be advanced by him from time to time in order to do the assessment work upon said property and to obtain patents from the United States government for the land contained in said claims, and thereupon refused to extend the time any longer; that this defendant, believing at said time that if the foreclosure of said mortgages could be delayed that money might be procured by means hereinbefore mentioned and that it was to the interest of all the stockholders of said company that said suit to foreclose be not brought, finally entered into an arrangement with the said Frank L. Bell that this defendant personally would advance to said company for the purpose of protecting the interests of said company, one half of the necessary money to do the assessment work and one-half of the necessary money to apply for patents upon said land at such time as might be deemed advisable on condition that the said Frank L. Bell would delay the prosecution of said actions for a reasonable time, the time then not being agreed upon, and that said Bell should advance one-half of said money; that said defendant continued from time to time to advance money and when the said Bell concluded that a reasonable time had elapsed, this defendant continued to urge him to grant further delay, but

all of said time the said Bell was impatient and expressed himself as believing that the property itself was not worth the amount of the indebtedness, and it would be necessary at some time to foreclose said mortgages and that the sooner it was done the better for all concerned; that this defendant at the time of making the agreement aforesaid, informed the said Frank L. Bell that a great many people owned stock in the company and that while this defendant was under no legal or moral obligation to protect them except that he was a trustee in said company, yet a great many people of them were his personal friends and he desired to protect them in every way possible; that he informed the said Frank L. Bell that if he pushed said action without granting a reasonable time to see what could be done about protecting said interests that he would resort to every expedient in his power to delay said action and to prevent the sale of said property; that thereupon at the request of said defendant it was agreed between Frank L. Bell and said W. W. Black that if at any time said Frank L. Bell brought proceedings to foreclose said mortgage or to collect the amounts due to him from said company and if the property were sold and it did not bring at such sale more than the indebtedness against said company and it was necessary to bid in said property by said Frank L. Bell that the property was to be bid in in the name of said Bell and this defendant, and that all persons who held stock in said company, if they desired so to do upon payment of their share of the indebtedness in proportion to the amount of stock held by said stockholder were to participate in the proceeds that might be derived from the sale or disposal of said property to the same extent and in the same proportion as said Bell and this defendant should receive out of the proceeds of said property; that during the year 1908 after consultation with this defendant said Frank L. Bell, as this defendant was informed and believes, offered to the stockholders of said company that if they would bear their proportionate expenses of caring for said property and obtaining patents on said land that said Bell would forego the foreclosure of said mortgages for a reasonable time to enable all parties interested to determine whether it were possible to obtain money to develop said property; that although he made an appeal to all the stockholders of said company, the total amount of promises to furnish financial assistance amounted to less than One Hundred Dollars; that thereupon said Bell became impatient and insisted that he would foreclose said mortgages and proceed to collect his indebtedness;

that as part consideration for the extension of time by the said Frank L. Bell as aforesaid, said Black, acting for himself and as trustee of said company had agreed that if said Bell delayed his prosecution of said suit for a reasonable time and that this defendant was satisfied that he had delayed the same for a reasonable time and had given the company opportunity to raise money to develop said property; that this defendant would interpose no frivolous objection and would not unnecessarily delay him in the collection of said debt and would use all lawful and reasonable means to prevent expense in the foreclosure of said action; that during all of said time this defendant had used every means within his power to raise money in behalf of said company and had failed to secure any money whatever; that after the arrangement hereinbefore mentioned all money was advanced by said Bell and said Black to said company and no one stockholder or other person contributed any money to protect the interests of said company and that this defendant became satisfied that it was impossible for either him or said company to raise any money or to develop said property or to do anything that would get enough money to pay the indebtedness of said company and that the action brought in the Superior Court of the State of Washington in and for Snohomish County by said Frank L. Bell to have a receiver appointed was proper and necessary; that the company was entirely insolvent, could not pay its debts, had no means by which it could do so, and that further delay was of no advantage to either the stockholders of the company or to any person connected in any way with said affair. That this defendant alleges that said action was brought and all proceedings had honestly and without any fraud and with the very best intentions of protecting everybody connected with said company; that as a result of the said proceedings the said property was advertised by the receiver and at said receiver's sale was bid in in the name of Frank L. Bell and W. W. Black so as to fully carry out the agreement hereinbefore mentioned, and for the reason that there were no other persons or person who would bid anything like the amount of the indebtedness against said property; that thereafter this defendant caused to be published in the papers in Everett, Washington, a notice that such sale had been made and had been duly confirmed and that all stockholders in said company could pay their proportionate share of said indebtedness and be allowed to participate in the proceeds that might be derived from said property to the

same extent and in the same manner as the said Bell and Black and in like proportion; that he did this in order that the small stockholder would not be frozen out if he deemed that the property was worth more than the indebtedness; that pursuant to these notices a meeting attended by a large number of the stockholders of said Sunset Copper Mining Company was held in the City of Everett and that this defendant explained the whole matter to them reciting to them what he had done to protect their interest and informing them that said sale had been made and the sale had been confirmed and the title then stood in the name of Frank L. Bell and W. W. Black, but that they were entirely willing to allow each of the stockholders who felt that the property might be more valuable in the future and who wanted to participate in the proceeds of said property, upon paying their proportionate share of the indebtedness, to become interested in the proceeds of said property in like proportion of said Black and Bell were to retain title to the said property and be allowed to use and dispose of the same but to honestly account to the said stockholders for their proportionate share of any proceeds that might be derived by sale or otherwise from said property, and that after a discussion of the matter by the stockholders, a large number of them came to the conclusion that the property was not worth the amount of such indebtedness and that they did not care to pay their proportionate share, but that a number of the stockholders concluded that probably in the hands of said Bell and said Black the property might be so managed that more might be realized out of the same than the amount of the indebtedness and they did conclude to pay their proportionate share of indebtedness to said Bell and said Black and thereupon certificates were issued to them showing the amount of the indebtedness and the amount that they had to pay; which certificates provided that the said Frank L. Bell and said Black should be the owners of said property and have the right to dispose of the same or to improve the same in any manner that they might deem proper and that they were to honestly account to said persons for their proportionate share of the proceeds; that all of said transaction was done wholly and fully to protect the said stockholders and with no design of cheating or defrauding them in any way whatever; and that this complainant knew all of these facts but refused at any time to contribute anything either by lending to the company or otherwise furnishing a single cent to aid said company in developing or holding its property, but con-

tinued at all times to annoy the company and to threaten these defendants with annoying suits; that this defendant alleges that this suit has been brought for no other purpose than to annoy the said defendants in the hope that said defendants would be so annoyed as to pay him large sums of money for the purpose of getting rid of such annoyance.

XXIII.

As a further affirmative answer to the complaint herein, this defendant alleges that since the receiver's sale before mentioned said defendants Frank L. Bell and W. W. Black have caused assessment work to be done upon the said mining claims for the years 1909, 1910, and 1911, and that said assessment work was of the value and cost of approximately $5,500.00 and said amount was actually paid out in cash for the purpose of holding said claims under and by virtue of the laws of the State of Washington and of the United States; that in addition thereto the said defendants have paid for the purpose of securing patents upon said claim, for surveying and necessary fees paid to the surveyor general and to United States for the purchase of said land at the rate of $5.00 per acre, for advertising and attorney's fees, etc. and expenses incident thereto, more than the sum of $8,000.00; all of which have been done since said receiver's sale, and all of which was properly and necessarily expended in holding and securing title to said claims. The defendant further alleges that in addition thereto large sums of money have been paid on account of taxes and for caretakers and watchmen, and also repairs to said property and expenses incident to looking after the same and the care thereof, and that neither the said complainant nor any other stockholder nor any person in the Sunset Copper Mining Company has paid or offered to pay any money on account of these things or anything else and that complainant has especially refused to pay anything at any time to assist the said defendants in holding or protecting said property.

Wherefore this defendant prays that this action be dismissed at the cost of the said complainant; that this court decree that the title in, to and concerning said claims mentioned in the complaint herein or in this answer and all other property mentioned in this complaint or answer, is in

said defendants, and for such other and further relief as to the Court may seem equitable and for his costs expended in this action.

J. A. COLEMAN,

L. L. BLACK,

Solicitors and Counsel for Defendant W. W. Black.

Office and Post Office Address, Everett, Washington.

State of Washington, County of Snohomish, ss.

W. W. Black, being first duly sworn on oath, deposes and says that he is one of the defendants named in the above entitled action; that he has read the annexed foregoing answer, knows the contents thereof and verily believes the same to be true.

W. W. BLACK.

Subscribed and sworn to before me this 25th day of November, 1913,

L. L. BLACK,

(Seal)

Notary Public in and for the State of Washington, residing at Everett, Washington.

Service of the within answer is hereby acknowledged and admitted, and copy thereof received this 26th day of November, 1913.

GEORGE H. WALKER,

Attorney for Complainant.

Indorsed: Answer of Defendant, W. W. Black. Filed in the U. S. District Court, Westeern Dist. of Washington, Northern Division, Nov. 26, 1913, Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division.

(In Equity.)

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL, and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Answer of Defendant Frank L. Bell

To the Judges of the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division:

The defendant, Frank L. Bell, appears as attorney in person for himself herein, and for a separate answer to the bill of complaint of the plaintiff, respectfully shows and alleges as follows:

1st. Answering paragraph "I" of said complaint, this defendant alleges and states that he is without knowledge as to whether the plaintiff was at the time mentioned in said complaint a citizen of the United States of America and a citizen and resident of the State of Pennsylvania.

2nd. Admits all of paragraphs numbered "II", "III", "V", "VIII", "XX" and "XXIII" of said complaint.

2nd. a. Answering paragraph "IV" of said complaint, admits that the defendant, Sunset Copper Mining Company, a corporation was organized under the laws of the State of Washington and a citizen and resident of said state up to about the year 1909 and alleges that since in or about the

year 1909, it ceased to be a corporation and since such time has not been a corporation and not a citizen and resident of said State of Washington.

2nd. b. Answering paragraph "VI" of said complaint, admits that the principal place of business of the Sunset Copper Mining Company was at Everett, Washington, and alleges that this defendant is without knowledge as to when said Company was organized, the amount of its capital stock and whether said stock was ever increased.

3rd. Answering paragraph "VII" of said complaint, this defendant alleges and states that he is without knowledge of whether the plaintiff now or at any time, owned 58,250 shares of the capital stock of the defendant corporation or any stock therein; and therefore denies the same and denies that this suit is brought without collusion to confer jurisdiction in a Court of the United States and denies that this action is brought in good faith and alleges with respect thereto, that the action is not brought in good faith but for the purpose of carrying out a threat made by plaintiff to this defendant, that unless this defendant and the defendant Black would buy plaintiff's said stock and pay him an exhorbitant price therefor, that he would bring this action for the purpose of annoying and embarrassing the defendant, Black and this defendant and also for the further purpose of carrying out his threat that unless this defendant and said Black would let the plaintiff have an option at a figure which he should set that he would bring an action against said Black and this defendant to annoy and embarrass them and to hinder them in dealing with the mining claims and property referred to in said complaint.

4th. Answering paragraph "IX" of said complaint, admits that the defendant Black acted as trustee and resident manager of said corporation up to March, 1909, but denies that since said time he has acted either as such manager or trustee.

5th. Answering paragraph "X" of said complaint, admits that the books and stock records of said corporation were brought to Glens Falls, N. Y., temporarily for examination and making up and alleges that the same were at Glens Falls but for a few days only when they were

duly returned to the office of said corporation at Everett, Washington; and denies that the same was done and performed with the assent of this defendant, and as to the same alleges that this defendant at the time had no interest in said corporation or that he was in any way acting for it.

6th. Answering paragraph "XI" of said complaint defendant admits that one W. H. Baldwin became the owner of the majority of the stock issued by said corporation but alleges that he is and was without knowledge as to the number of shares of said corporation; and further that he is and was without knowledge as to the amount paid by Baldwin for any stock owned or held by him and from whom he acquired the same, and that this defendant is without knowledge as to the amount any of the stockholders of said corporation paid for their shares therein and denies that on October 7, 1903, that the officers and trustees of said defendant corporation wrongfully and fraudulently increased its capital stock without the knowledge or assent of minority stockholders or plaintiff or without a meeting called for that purpose as required by the laws of the State of Washington, and alleges that he is and was without knowledge of whether said W. H. Baldwin thereafter became owner and holder of a large number of shares of this additional stock or that he promised to pay said corporation the sum of ten cents per share and actually paid two and a half cents per share; admits that at the time of the death of said Baldwin about the year 1907, he was owner and holder of the 1,250,000 shares of the stock of said defendant corporation which was a majority of the shares issued and outstanding. And alleges that any increase in the stock of said company, if any, there was, was regularly made, and that if any of the same was bought by said W. H. Baldwin, he paid the full market value thereof and same was in the best interest of said Company.

VII.

Answering paragraph "XII" of said complaint denies that this defendant acted as attorney for W. H. Baldwin at any time whensoever, and that he ever acted as a co-trustee, majority stockholder or otherwise, with defendant Black, or each, all or any of them conspired and federated with each other or with the said W. H. Baldwin and Henry C. McNutt, or any other persons or any of them for the

purpose of defrauding the minority of the stockholders of said corporation or for the purpose of manipulating or handling the business of said corporation so as to throw the same into insolvency or for the purpose of converting the assets of the said corporation to their own use and benefit and to the injury of the plaintiff or any other persons and denies that they did anything for the purpose of injuring the corporation or any of its stockholders or to gain any benefit whatever, except to increase the value of all of the stock of said corporation, either between the years 1902 and 1906 or at any other time, but on the contrary said defendants allege that every act they did in connection with said corporation, was to protect the interests of the minority stockholders and every other stockholder and for the purpose of advancing the interests of said corporation; the said defendant admits that the notes described in said complaint were signed by the defendant corporation in favor of Ellen C. Baldwin, who was the wife of W. H. Baldwin, and that the mortgages described, were executed, but denies that said notes or mortgages were executed without any consideration whatever, but said defendant alleges that the said corporation received cash to the amount of notes mentioned and that said cash was actually expended by said company under the direction of the defendant Black in developing the property of the said company to the best of his ability and under the direction and by the authority of the Board of Trustees of said defendant corporation; that said money was used in making improvements upon the property of defendant corporation described in the complaint and that all of the said money was used in making improvements in said company, and that all of said improvements were made upon the advice and direction of skillful mining engineers and was made honestly for the interest of the company and that the consideration for the execution of said notes and mortgages was actual cash to the full amount of the sums mentioned in the said several notes and this defendant denies that they were any collusive or fraudulent actions on the part of the said defendants or by any of them; and this defendant alleges that at all times herein mentioned with reference to the transactions complained of in the complaint, the defendant Black acted according to his very best judgment in the interests of said company having an earnest purpose at all times to promote the interests of said company and its stockholders and the said defendant alleges that at all of the times the other trustees acted in the same manner so far

as known to this defendant; said defendant admits that the persons named in said paragraph were acting as trustees and alleges that all notes, except one for $4,263.60 and one for $4,649.50 were executed in Everett, Washington, and admits that the others were executed in New York; defendant alleges that the mortgage dated December 31, 1904, was executed in Washington and the other mortgage was executed in New York.

VIII.

Answering paragraph "XIII" of said complaint, this defendant alleges that he is without knowledge as to any of the facts in said paragraph stated, and therefore denies the same.

IX.

Answering paragraph "XIV" of said complaint this defendant admits the death of said Baldwin and the transfer of said stock and notes to this defendant, but denies that said notes were purchased long before their maturity and that this defendant had been attorney for said W. H. Baldwin for years previous to said transfer and denies that a large number of said claims so assigned to him were collusive and fraudulent and not properly due and owing from said corporation and denies that said purchase was made by this defendant to further a fraudulent attempt to convert the property and assets of said defendant corporation to the use and benefit of himself and said Black and to the loss and injury of the minority stockholders and alleges that this defendant paid full value for said stock and notes without any knowledge whatsoever on his part of any collusion or fraud in the issuing of said notes or in the purpose of issuing the same and alleges that there was no collusion or fraud in the issue of the same and further alleges that this defendant then and still had no desire to control said corporation or to injure its minority stockholders but took said notes and stocks in due course for value.

X.

Answering paragraph "XV" of said complaint, denies conspiracy or confederating with said Black at any time to convert assets of said company to their use or either of them; admits that the suit was brought by this defendant in Superior Court, Snohomish County, against the defendant which alleged that said defendant was insolvent and unable to pay its debts which were more than $40,000.00, and that said defendant had no cash, that its mining claims were valuable and would be forfeited unless the assessment work was done; that said complaint asked that a receiver be appointed to care for the property of said corporation and authorized to sell its property and that this plaintiff be allowed to bid at the sale thereon, and alleges with reference thereto that it was without conspiring or confederating to convert the assets of said corporation to the use of said Black and this defendant; denies that there was no proper service of a summons in said action on the defendant corporation and no defense made by it and further alleges that this defendant is without knowledge what judge appointed a receiver of said corporation; and is also without knowledge what proceedings were taken in said action; admits that judgment was entered in said action for $37,501.75 which was made a lien upon all mining property of said defendant corporation; that the judgment adjudged said corporation insolvent and that a permanent receiver was appointed but denies that said proceedings were null and void for any reason whatsoever and further denies that said proceedings were a part of collusion and fraudulent scheme, planned between said Black and this defendant, intended to secure control to them of the property and assets of said defendant corporation and of converting same to their use and benefit; and denies that said judgment was procured solely through fraud and collusion; admits that records in said action show that the Court found that the allegations of plaintiff's complaint were true and alleges that the same were true, and further alleges that the summons and complaint in said action was served upon the defendant corporation personally, and that the plaintiff in this action had notice thereof at and previous to the time said action was commenced and further that he personally suggested to and requested this plaintiff to foreclose said mortgage and at the same time demanded that after the same was foreclosed that this defendant give to him an option thereof.

XI.

Answering paragraph "XVI" of said complaint this defendant alleges that he is without knowledge as to any and all of the allegations therein contained and therefore denies the same.

XII.

Answering paragraph "XVII" of said complaint, this defendant admits the filing of the claim of judgment in the sum of $12,764.57 but denies that the defendant corporation was not doing business in the State of New York and denies that there was no sufficient service of summons upon the defendant as alleged in said paragraph and that judgment in said action was taken without service of any kind or secured through fraud and collusion and is wholly void and of no effect; and denies that it is an unlawful claim against said defendant corporation and with respect thereto alleges that said judgment was regularly and properly taken and founded upon a valuable consideration and upon a debt justly due and owing this defendant from said defendant corporation, and denies it should not have been allowed by said receiver.

XIII.

Answering paragraph "XVIII" of said complaint, defendant alleges that he is without knowledge as to any of the allegations therein contained, and therefore denies the same.

XIV.

Answering paragraph "XIX" of said complaint, defendant admits that the total amount of claims filed was in excess of $64,000.00 and admits that one petition of the receiver set forth that claims to the amount of $2,000.00 were filed with him within the time required by the said notices, but alleges that in another report he showed that claims in excess of $64,000.00 had been filed and alleges that same were by the court adjudged to be valid claims and admits that the court had by its order mentioned in said paragraph adjudged said claims to be valid and subsisting; this de-

fendant admits that Judge Lester Still from Island County was called in by this defendant to hear the petition and that after said Lester Still had heard said motion he signed the order mentioned in said paragraph and admits that by such order, said receiver was only required to require a payment of only $2,000.00 cash and alleges that said order provided that the remaining of the bid could be paid by the claims proved before said receiver; this defendant alleges that the reason for requiring payment of case was to have a sufficient amount of cash on hands to pay the receiver and the costs and expenses of the receivership and of such sale.

XV.

That as to paragraph XXI, this defendant admits that the said E. Rudabeck requested that the receiver be instructed to bring an action against Ellen C. Baldwin for the unpaid portion of the capital stock so owned by her or her assignee Frank L. Bell; this defendant admits that said receiver was not directed so to do, and this defendant admits that said receiver reported that the said Ellen C. Baldwin did not owe the said corporation any sum and this defendant denies that said report was not based upon a bona fide investigation or upon any investigation at all, but alleges that the said receiver secured information as to the condition of affairs and as to the conditions of the estate of Ellen C. Baldwin, and he reported in open Court to the Judge that there was no legal claim of said corporation against Ellen C. Baldwin.

XVI.

Answering paragraph "XXII" of said complaint, admits that said property was bid in by said Black and this defendant; admits paying the sum of $2,000.00 in cash, and as to said sale, alleges that the bid of said Black and this defendant was the sum of $40,000.00, and that in bidding in said property, this defendant acted in his individual capacity; denies that the cash payment of said Black and this defendant was in cancellation of their claims against the defendant corporation and denies that at the time of said receiver's sale this defendant acted as a trustee of said defendant corporation and denies that he had been for several years the attorney for said defendant corporation and with respect thereto alleges that he never acted as at-

torney for said corporation after the death of W. H. Baldwin, which was about the month of February, 1905, except in one instance, serving a summons and because its officers represented they had no money to employ an attorney, nor was he ever a trustee of said corporation except for a day about the month of February, 1904.

XVII.

Answering paragraph "XXIV" of said complaint this defendant denies that the proceedings in suit of Frank L. Bell vs. said defendant corporation were collusive and fraudulent; denies that this defendant was a party to said fraud and collusion; denies that he conspired and confederated with said Black or any one whomsoever, in the conduct of such suit for the purpose of converting the property and assets of the defendant corporation to the use of said Black and himself and to the injury of plaintiff; denies that he directed the taking of any proceedings which resulted in the final sale of the property. Denies that he wrongfully and fraudulently attempted to become a co-owner, in consideration of the sum of $2,000.00 and the cancellation of his collusive and fraudulent claim or of property of the defendant corporation; denies that the price for which said properties were sold at receiver's sale is absurdly low, and not more than a nominal consideration therefor; admits that application has been made for patent on the thirty-six mining claims described in the complaint and that upon granting of said patents said Black and this defendant will become the owners in fee simple thereon; alleges that he is without knowledge of the value of the property in question.

XVIII.

Answering paragraph "XXV" of said complaint admits that since the assignment of stock from Ella C. Baldwin to this defendant, he and said Black have owned a majority of the stock of said corporation; but denies that ever since such time, they have been and still are in control thereof; denies that they have conspired and confederated with each other and operated and controlled said corporation, disregarding its rights and interest and the rights and interests of minority stockholders of which plaintiff is one of them. Denies that they have carelessly mismanaged said corpora-

tion and neglected their duties as trustees thereof and denies committing acts of willful misconduct and breach of trust, and denies that either fraudulent or willful conduct was allowed to be committed by their officers and trustees of said defendant corporation, and denies that fraudulent and willful conduct on the part of certain officers of said defendant corporatiton could have been prevented by said Black and this defendant giving care and attention to their duties and with respect to the allegations in said paragraph contained, this defendant alleges, that he has never sought to control said corporation and has never in any way interfered therewith and since the stock was so transferred to him he has not counselled with any of the officers of said corporation, has attended none of its meetings, and has never had any of said stock transferred to him upon the books of said corporation and therefore has never been entitled to vote thereon. He further alleges with reference thereto, that he offered to this plaintiff, a proxy to vote said stock from said Ellen C. Baldwin to the end that plaintiff might elect himself in as a trustee and manager of the defendant and said plaintiff declined said offer and refused to have anything to do with the defendant corporation in the management or control thereof and in connection with this defendant's offer thereon said plaintiff advised this defendant that he would not assist said corporation either in giving his time or financial aid.

XIX.

For a separate and further defense the said defendant alleges that one N. Rudebeck, a minority stockholder of said Sunset Copper Mining Company, entered a motion to set aside the sale of the property of said company by said receiver, as alleged in the bill of complaint herein. That said motion was made in behalf of himself and all other stockholders and was denied by the Court about the month of March, 1909, and said order was not appealed from and is unreversed and the decision thereon is res judicata thereon and binding upon the complainant in this suit and by reason thereof plaintiff cannot maintain this suit, nor can he attack said order by this, a collateral action; and said defendant further alleges that after the sale of said property by the receiver of said Court, N. Rudebeck and other stockholders appeared in said court and objected to the confirmation of such sale, objecting and alleging substantially the allegations

contained in the complaint in this action, and the court duly heard the same, passed upon the same, and overruled their objection and confirmed said sale, all of which was done in the Superior Court of the State of Washington in and for the County of Snohomish, being the court in which the receiver had been duly appointed and in which said proceedings were duly pending, and by reason of the foregoing, the matter is res judicata and this plaintiff cannot maintain this suit nor attack said order by this, a collateral action.

XX.

For a separate and further defense herein, defendant alleges that now, and at the time plaintiff's alleged cause of action arose and accrued, the laws of the State of Washington, in substance, provided "The Superior Court in which a judgment has been rendered or by which or the Judge of which a final order has been made, shall have power, after the time at which said judgment or order was made, to vacate or modify such judgment or order for fraud practiced by the successful party in obtaining the judgment or order upon a petition filed in the original case within one year after the judgment or order was made." That this suit is not a petition in the original case and was not commenced within one year after the rendition of said judgment and the taking and filing of said order under the laws of the State of Washington, the alleged cause of action set out in the complaint herein is barred by the Statute of Limitation and plaintiff has no right to maintain the same.

XXI.

As a separate and further defense herein, defendant alleges that now and at the time plaintiff's alleged cause of action arose and accrued, the laws of the State of Washington, in substance provided, "That actions for relief upon the ground of fraud must be commenced within three years after the cause of action thereon shall have accrued," and the alleged cause of action set forth in the complaint accrued more than three years before the time of the commencement of this suit by plaintiff; that plaintiff knew of the taking of said judgment and order at the time of the taking of each thereof and at and from such time has had full

knowledge of all of the same and of all the matters alleged in the complaint herein, and this suit is barred by said limitation statute.

XXII.

As a separate and further defense herein this defendant alleges that at the time plaintiff's alleged cause of action arose and accrued the laws of the State of Washington in substance provided and ever since said time have provided and do now provide that for any of the matters complained of in the complaint, action shall be commenced within two years after the cause of action shall have accrued; that Section 165 of Remington & Ballinger's Annotated Codes and Statutes of Washington provides that an action for relief not hereinbefore provided for shall be commenced within two (2) years after the cause of action shall have accrued, and defendant further alleges that complainant is seeking to have the defendant declared a constructive trustee of said property on the ground that he was a director of said company when he purchased the property at said receiver's sale, and defendant alleges that such a proceeding is an action for relief not otherwise provided for in the laws of Washington, and that it therefore falls within Section 165 of Remington & Ballinger's Code above cited; that the alleged cause of action set forth in the complaint did not accrue within two years next before the commencement of this suit by plaintiff, and that the plaintiff knew of all of the facts set forth in the complaint and had full knowledge of the same at all the times mentioned in the complaint herein and this suit is barred by said limitation statute.

XXIII.

That said complainant was guilty of laches in bringing his alleged cause of action and that his alleged cause of action and bill of complaint is stale; that said complainant knew of the acts and transactions alleged in his complaint at or about the time of their happening; that said complainant had knowledge of the increase of capitalization of said corporation of the sale of stock to said Ellen C. Baldwin and to said W. H. Baldwin and of the terms of sale, of the giving of the notes and mortgages to Ellen C. Baldwin, of the bringing of the foreclosure suit in Snohomish County, of

the receivership of said corporation, of the sale of said property, of the objections filed by said Rudebeck, of the confirmation of the sale to Black and Bell, and that said Black was a trustee at the time of the purchase, and of the other transactions at or about the time they occurred; that said complainant knew the defendants were expending funds after the purchase for the development and patenting of said property; and defendant further alleges that all the court proceedings of Snohomish County, alleged in said bill of complaint were duly recorded as provided by law, in the County where said mining property is situate, and that said complainant had constructive knowledge as well as actual knowledge of said transactions and this defendant alleges that if complainant had any cause of action against the defendant herein, he should have brought same before defendants Black and Bell had expended large sums of money in holding the property as alleged herein; that there is no valid excuse for the delay of said complainant and that even if complainant ever had a cause of action, which this defendant denies, that his delay has prejudiced and injured this defendant; this defendant alleges that complainant's cause of action is barred by inexcusable delay and laches.

XXIV.

For a separate and further defense, herein, this defendant alleges, that the Court is without jurisdiction to hear and try this cause, for the reason that it appears upon the face of the bill that this suit is brought by plaintiff for the benefit of the Sunset Copper Mining Company, a corporation of the State of Washington. That an action therefore must be brought by said Company and can only be brought by a stockholder thereof, after such stockholder has demanded that such Company bring action, and upon its refusing to do so and that complainant has never demanded of said corporation that it bring this action.

XXV.

That previous to the month of May, 1908, the said Ellen C. Baldwin had loaned said Sunset Copper Mining Company, money, for which said Company gave its notes as follows:

One dated November 3d, 1903, payable in one year from the date thereof, for	$ 6,000.00
One dated November 13th, 1903, payable in one year from the date for	1,000.00
One dated November 20th, 1903, payable on demand for	1,000.00
One dated November 27th, 1903, payable on demand for	3,000.00
One dated February 8th, 1904, payable on demand for	5,471.00
One dated February 8th, 1904, payable on demand for	5,000.00
One dated September 17th, 1904, payable on demand for	4,649.50
Total	$29,384.10

and one other note of $2,000.00 made the latter part of the year 1904, or in the year 1905, making a total of $31,384.10.

That all of said notes represented actual cash advanced by her to said Company and substantially all of the money advanced to said Company and represented by said notes actually passed through the hands of this defendant, who had knowledge thereof. All of said money was advanced by her to pay debts of said company, install machinery and mining equipment and to do the assessment work to hold said company's mining claims and, to the knowledge of this defendant substantially all of said money was expended by this defendant solely and wholly for the use and benefit of the said Sunset Copper Mining Company and was expended honestly to further the interests of the said Sunset Copper Mining Company and to improve its property to the best of the ability of the said defendant,

and said defendant alleges and he is informed and believes and therefore alleges to be the fact that all of the said indebtedness was for a good and valuable consideration assigned to Frank L. Bell. Said defendant alleges that all of the money not used for actual improvements upon said property, was expended for necessary expenses connected with the business of said corporation and was inconsiderable in amount.

XXVI.

For a separate and further defense and for a specific defense to the allegations in paragraph "VII" of said complaint, that this action is brought by plaintiff in absolute good faith, this defendant alleges, that after the assignment to him of the indebtedness held by Ellen C. Baldwin, in notes representing $29,384.10 and upwards, that the complainant came to the City of Glens Falls, N. Y., where this defendant resides and remained there for several weeks. That for about the first week of his stay in Glens Falls, he frequently or almost daily called upon the said Ellen C. Baldwin demanding of her that she give him an option upon the notes and stocks which he claimed she had in the defendant corporation and was advised by her that she had no stock or notes but had transferred same to this defendant but for said week or thereabouts he declined to call upon this defendant. He next came to the office of this defendant and for some days took much of this defendant's time and demanded at first that this defendant take steps to oust the defendant Black as a trustee of the defendant corporation and place the complainant in his stead as trustee and resident manager at a large salary, all of which this defendant declined to do unless he, the said complainant, would go to Everett, Washington, and spend his whole time, and further condition upon his getting the consent of the local stockholders at Everett, and the defendant Black, thereto, and of his being able to raise money to pay to himself a fair salary which should be agreed upon by the trustees of the corporation. This the said complainant declined; and thereupon demanded that this defendant give to him an option upon the notes set up in the complaint and of the stock in the defendant corporation which had been assigned to this defendant. That he demanded that defendant give

him an option on such holdings in thes um of $60,000.00 and with it a separate agreement that in case he made a sale of the same that this defendant would secretly pay him for such sale, $20,000.00 all of which this defendant declined to do. The next said complainant came to the office of this defendant and demanded that defendant pay him $20,000.00 for his stock and thereupon said to defendant that in case defendant declined so to do, he would write letters to all of the stockholders of the defendant corporation and from them obtain money with which to institute suits against this defendant and said Black to annoy them in the management and sale of the property and would take such steps and proceedings as would prevent this defendant ever getting anything out of his stocks or debts in said defendant corporation. Whereupon this defendant demanded that the complainant leave his office and never return, since which time he has not returned, and this defendant alleges that this action is brought by the plaintiff to carry out his said threats as above set forth and for the purpose of compelling if he can, said Black and this defendant to pay him money and buy his stock in said corporation and for no other purpose whatsoever.

XXVII.

For further and separate defense to the complaint herein and as a counterclaim to the alleged cause of action set forth in the complaint, this defendant alleges, that since the year 1907, said defendants Black and Bell have caused assessment work to be done upon said mining claims for the years, 1908, 1909, 1910 and 1911 at a cost to this defendant of approximately $7,300.00 and said amount was actually paid out in cash for the purpose of holding said claims under and by virtue of the laws of the United States and of the State of Washington; that in addition thereto, the said defendants have paid for the purpose of securing patents upon said claims surveying and necessary fees paid Surveyor General, and the United States for purchase of land, advertising and attorneys fees, upwards of $8,000.-00 all of which has been done since said receiver's sale and was properly and necessarily expended for holding and securing title to said claims and that upwards of $4,000.00 of said money has been expended by this defend-

ant. Defendant further alleges that in addition thereto, large sums of money have been paid on account of taxes and for caretakers and repairs to property and expenses incident in looking after the same; that this defendant has personally paid on such taxes, $500.00 and that said complainant and no other stockholder of said defendant corporation has offered to pay anything on account thereof. That when the complainant was at Glens Falls as aforesaid, the matter of doing the assessment work for holding the said defendant corporation's mining claims was talked of with him and also the matter of securing patents for said claims and in said talk he advised the doing of the same by said Black and this defendant and agreed to its being charged to the defendant corporation and assented to its being proper and legitimate work to do; that he expressly stated to this defendant that he would consent to the corporation paying for such assessment work and expense of securing a patent of the claims out of the property of the corporation and further agreed that if he later found himself financially able so to do, that he would contribute thereon and that this defendant expended money in doing such assessment work and urged the securing of such patents in reliance upon the representations and agreements of the said complainant. That before this defendant foreclosed said mortgage he requested the complainant and others to pay their proportionate part of the indebtedness of the defendant corporation and of the expense of doing assessment work for the year 1908 and thereafter if necessary, and of securing patents on its said claims, personally writing letters to all stockholders known to this defendant including complainant and agreeing that this defendant would advance such part of the cost thereof as the amount of stock held by him bore towards the total amount of stock outstanding of said corporation provided other stockholders would do likewise and that complainant refused to contribute his proportionate share thereto as did all other stockholders with the exception of the defendant, Black and about six or seven other small holders. And this

defendant alleges that said defendant corporation is without means with which to pay the indebtedness and the stockholders thereof are unwilling so to do and that the complainant is financially unable to do the same as he so advised this defendant.

Wherefore, the defendant demands judgment as follows:

First: That the complaint herein be dismissed with costs against the plaintiff and in favor of this defendant; and that it be decreed that defendants herein own all property mentioned or referred to in the said complaint.

Second: In the event of the Court setting aside said sale, and conveyance by said receiver to these defendants, then that the Court ascertain and determine the amount of money loaned by said Ellen C. Baldwin to said defendant corporation, the amount of indebtedness of said corporation to this defendant, including the amount of money advanced by this defendant to pay taxes and for doing assessment work, making surveys, application for patents, paying for land and money advanced it for all other lawful purposes, and that said corporation and the plaintiff be decreed as a condition precedent to pay this defendant the amounts so ascertained and determined by the Court and to so pay the same previous to the time of granting such decree herein and as a condition of setting aside the said sale and conveyance and that the defendants have such further, other and different relief as upon the trial of the issues herein, the Court shall deem equitable.

Dated December 24th, 1913.

FRANK L. BELL,

Attorney in person for Defendant, Frank L. Bell, Office and P. O. Address, Glens Falls Ins. Building, Glens Falls, N. Y.

at which place service of all subsequent papers herein may be made.

State of New York, County of Warren, ss.

Frank L. Bell, being first duly sworn, on oath, deposes and says that he is one of the defendants named in the above entitled action; that he has read the foregoing answer and knows the contents thereof, and verily believes the same to be true.

FRANK L. BELL,

Subscribed and sworn to before me this ..... day of December, 1913.

.....

Notary Public in and for the County of Warren, State of New York, Residing at Glens Falls, N. Y.

Indorsed: Separate Answer of the Defendant Frank L. Bell. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 29, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States, for the Western District of Washington, Northern Division.

(In Equity.)

G. J. Buchler, Complainant,

vs.

W. W. Black, Frank L. Bell, and Sunset Copper Mining Company, a Corporation, Defendants.

No. 2112

Order on Complainant's Motions to Strike Certain Parts of the Answers of the Defendants, W. W. Black and Frank L. Bell

This cause came on regularly for argument on the 24th day of February 1914 upon the complainant's two motions the one to strike certain parts of the answer of the defendants, W. W. Black the other to strike certain parts of the answer of the defendant, Frank L. Bell, the defendant W. W. Black appearing by Lloyd L. Black, the defendant Frank L. Bell having stipulated that the ruling of the court as respects the defendant W. W. Black should be the ruling as respects the defendant Frank L. Bell, and the complainant appearing by George H. Walker.

It is ordered that complainant's motions to strike paragraphs XX, XXI and XXII of each of said answers be, and the same are hereby granted.

To the making and entering of this part of the order the defendants W. W. Black and Frank L. Bell except and their exceptions are hereby allowed.

It is further ordered that in all other respects the complainant's motions to strike are denied.

To the making and entering of this part of the order the complainant G. J. Buchler excepts and his exceptions are hereby allowed.

This order is made upon the express understanding that it is the desire of the court that the widest possible latitude consistent with the rules of evidence shall be given all parties to this cause, to the end that a full hearing of complainant's cause of action as stated in his bill of complaint shall be had as well as a full hearing of the defendants' various remaining defenses and that the court will on final hearing of the cause and after all the evidence is in make revision of the various rulings this day in this order herein made, should such a revision be in the judgment of the court warranted by said final hearing and in the light of all the evidence.

It is further ordered that upon the final hearing and trial of the cause the defendants may present evidence of the various statutes of limitation as pleaded in their respective answers but the court in allowing the presentation of such evidence does not bind itself to follow such statutes of limitation.

It is further ordered that said answers of the defendants need not be re-drafted to comply with the terms of this order but that said paragraphs XX, XXI and XXII shall be considered as stricken from said pleadings.

JEREMIAH NETERER, Judge.

Indorsed: Order on Complainant's Motion to Strike certain parts of Answer of Defendants. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 24, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States, for the Western District of Washington, Northern Division.

(In Equity.)

G. J. Buchler, Complainant,

vs.

W. W. Black, Frank L. Bell, and Sunset Copper Mining Company, a Corporation, Defendants.

No. 2112

Stipulation

It is stipulated and agreed by and between counsel for the complainant and Frank L. Bell, one of the defendants who has appeared for himself in this cause without other counsel, that the motion of the complainant to strike certain parts of the last answer of the defendant, Frank L. Bell, on file herein may be heard at the same time the motion to strike certain parts of the last answer of the defendant, W. W. Black, is heard and that whatever ruling shall be made by the Court as respects the latter motion shall be considered the ruling as respects the former motion.

Dated this 5th day of January, A. D. 1914.

FRANK L. BELL,
Appearing for himself.

O. C. MOORE,
GEORGE H. WALKER,
Solicitors and counsel for the Complainant, G. J. Buchler.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 17, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States, for the Western District of Washington, Northern Division.

(In Equity.)

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL, and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Stipulation

Reserving the right to object to any evidence herein referred to for incompetency, irrelevancy and immateriality the defendants, W. W. Black and Frank L. Bell, hereby stipulate and agree with the complainant as follows:

I.

That for the purpose of proving the record of the case of Frank L. Bell vs. Sunset Copper Mining Company, No. 3554 in the United States Circuit Court for the Northern District of New York, the complainant may introduce without objection as to form or its not being the best evidence, the duly certified copy of the complete record of the case of Frank L. Bell vs. Sunset Copper Mining Company No. 9510 in the Superior Court of the State of Washington for the County of Snohomish, in which appears a complete copy of said case No. 3554.

II.

That during all the time from its commencement until final judgment was entered in said case No. 3554, the

statute of the State of New York required and still requires compliance with certain formalities by foreign corporations before they are permitted to do business in the State of New York, a copy of which statute, insofar as material to this case, is hereunto attached marked Exhibit "A" and thereby made a part of this stipulation.

That the phrase "moneyed corporation" in said statute covers banking and insurance corporations and that the Sunset Copper Mining Company is not now and never was a "moneyed corporation" within the meaning of said statute.

III.

That the Sunset Copper Mining Company never complied with said statute.

LLOYD L. BLACK,
A. COLEMAN,
Attorneys for Deft. W. W. Black.

FRANK L. BELL,
In person and as attorney for the defendant, Frank L. Bell.

O. C. MOORE,
GEORGE H. WALKER,
Attorneys for Complainant.

EXHIBIT "A."

Par. 15. Certificate of authority of a foreign corporation. No foreign stock corporation other than a moneyed corporation, shall do business in this state without having first procured from the Secretary of State a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business or if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The Secretary of State shall deliver such certificate to every such corporation so complying with the requirements of law. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state, unless prior to the making of such contract it shall have procured such certificate. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee or such foreign stock corporation or under either of them. No certificate of authority shall be granted to any foreign corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, nor to any foreign corporation, other than a moneyed or insurance corporation, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," or "benefit" as a part of its name.

Par. 16. Proof to be filed before granting certificate. Before granting such certificate the Secretary of State shall require every such foreign corporation to file in his office a sworn copy in the English language of its charter or certificate of incorporation and a statement under its corporate seal, and the signature of its president, vice-president or other acting head, particularly setting forth the business or objects of the corporation which it is engaged in carrying on or which it proposes to carry on within the state, and a place within the state which is to be its principal place of business, and designating a person upon whom process against the corporation may be served

within the state. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the state and such designation must specify such office or place of business of the said person so designated, and if it is within a city the street and street number if any, or other suitable designation of the particular locality. Such designation shall be accompanied with the written consent of the person designated and shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this state or until the filing in the same office of a written revocation of said consent executed by the person so designated. If the person so designated dies or removes from the place where the corporation has its principal place of business within the state, or files such revocation of his consent, and the corporation does not within thirty days after such death or removal or revocation of consent designate in like manner another person upon whom process against it may be served within the state, the secretary of state may revoke the authority of the corporation to do business within the state, and process against the corporation in an action upon any liability incurred within this state before such revocation, may, after such death or removal, or revocation of consent, and before another designation is made, be served upon the secretary of state. At the time of such service the plaintiff shall pay to the secretary of state two dollars, to be included in his taxable costs and disbursements, and the secretary of state shall forthwith mail a copy of such notice to such corporation if its address, or the address of any officer thereof, is known to him. The secretary of state may require the execution of any such designation, revocation or consent, to be authenticated as he deems proper and he may refuse to file it without such authentication.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Apr. 21, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

United States District Court, Western District of Washington, Northern Division.

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL, and SUNSET COPPER MINING COMPANY, Defendants.

No. 2112

Filed May ....., 1914.

On Final Hearing

O. C. MOORE, of Spokane, Wash.

GEORGE H. WALKER, of Seattle, Wash., for Complainant.

ROBERT McMURCHIE,

J. A. COLEMAN,

LLOYD L. BLACK, all of Everett, Wash., for Defendant.

NETERER, District Judge.

The plaintiff is now and during all times material to this action has been a citizen of the State of Pennsylvania. Defendant Bell is and has been a citizen of Glen Falls, New York, and defendant Black a citizen of Everett, Washington. The Sunset Mining Company is a corporation organized under and by virtue of the laws of Washington with its principal place of business at Everett. Defendant Black was judge of the superior court of Washington for Snohomish County from January, 1905, to January, 1913. He was also one of the trustees of the defendant company from 1903, and during a portion of that time served as secretary of the defendant company and as its local general manager. The majority of the trustees of the defendant company during the time material to this inquiry lived at Glen Falls, New York, where the majority of

the stock of the company was held. The company had an office at Glen Falls, and seems to have transacted its business from there, except the stockholders' meetings which were held at Everett, Washington. W. H. Baldwin appears to have been the dominating influence by reason of his large stock holdings. Defendant Bell is a lawyer and was the legal adviser of W. H. Baldwin and Ella Baldwin, his wife, and for a time was general attorney for the defendant corporation. He never acted as trustee for the defendant company except for one day in 1904. At this time it seems to have been necessary to enable the company to transact some business to fill a vacancy on the board, and he was elected and continued a trustee for one day. Defendant Black was not present at this meeting, and it does not appear that he knew anything about it. On August 3, 1904, the employment of Bell as attorney for the defendant company ended, although thereafter he attended to some legal matters for the company under special employment. The defendant company was capitalized for one million shares at $1.00 per share, which was subsequently increased to three million shares, and it acquired 36 mineral locations upon government land, and was required for the purpose of holding the claims to do $3600 worth of assessment or development work each year. The company had no funds except such as it obtained from selling what is termed in the evidence "treasury stock." This is stock contributed to a fund to be sold for the company's use. This stock was sold at from two cents per share upwards and the proceeds were used for doing assesment work. Funds derived from this source were insufficient for the company's needs, and the Baldwins advanced and loaned to the defendant company from time to time $29,384.10, and on February 10, 1905, a mortgage was given by the defendant company to Ella Baldwin to secure the payment thereof. The defendant Black advanced to the company December 26, 1906, for the purpose of doing its assessment work, $1500, and a mortgage to secure the repayment was thereafter made upon the company property to Black. On October 6, 1906, the defendant Black secured an option to purchase from Ella C. Baldwin 1,250,000 shares of the capital stock of the defendant company, and claims and mortgages held by her against said company amounting to not less than $35,000, for the sum of $100,000 to be paid at stated times and upon default Black's interest to cease, the stock and evidence of

indebtedness to be placed in bank in escrow, W. H. Baldwin having died in April, 1905, leaving Ella C. Baldwin, his widow, with no property except the Sunset property and her home. On November 5, 1906, Black sold his option to Soderberg for $130,000 and received $10,000. Soderberg assumed payments to be made to Mrs. Baldwin, and afterwards sold his contract to the Chelan Consolidated Copper Company. On February 13, 1907, Black in his individual capacity entered into a contract with the Chelan Consolidated Copper Company, in which the Baldwin option and Soderberg sale and purchase by the Consolidated Copper Company was recited, with the further recitation that all parties desired to have the claims and properties of the Sunset Copper Company improved and that the options did not contemplate the development of the mining claims beyond the ordinary prospective and development work, and that because of such fact the Chelan Consolidated Copper Company may enter upon the property "and develop * * * the same * * * and extract and ship * * * ores * * * in such manner as it may deem fit * * * but * * * in a miner-like manner, and all for the use and benefit of the Sunset Copper Company;" the Consolidated Copper Company to develop and pay the costs and expenses and upon the sale of the ore to pay the cost of mining and shipping and pay the balance, if any, to the Sunset Copper Company. This company did no work under this contract, but paid to defendant Black the $20,000 due him. On March 27, 1907, the Consolidated Copper Company sold its option to Albers, and on April 2nd following, Albers sold same to the Trout Creek Copper Company. This company expended in developing the mining property from $16000 to $20000. It sold approximately $8,000 worth of ore. The contract entered into by Black and the Chelan Consolidated Copper Company was ratified by the Sunset Copper Company as its act, and the board of trustees elected a general manager to look after the company's interest while this work was being done. The Sunset Copper Company afterward contended that it should receive the value of the ore shipped, which the Trout Creek Copper Company denied. A suit was commenced in New York to recover the $8,000 received for the ore. This suit was on May 23, 1908, settled by the parties, all of the trustees of the Sunset Copper Company and the plaintiff in this case signing the agreement for such settlement. On December 9, 1908, defendant Bell, having succeeded to the Bald-

win mortgage and stock, commenced a foreclosure proceeding in the superior court of Snohomish County, and on the same day a receiver was appointed, and it was "ordered that said receiver cause all necessary assessment work to be done upon the aforesaid mining claims;" and he was authorized to issue receiver's certificates for work done. Claims were filed with the receiver against the company by H. C. McNutt, $1307.95; defendant Bell, a judgment obtained in New York for $12,767.67; H. W. Holmes, $1488; W. W. Black, $10,923.21, a part of which was for the mortgage given; Bartlett, $12.80; and the Bell mortgage, on which suit was commenced, $37,501.71. On March 18, 1907, Rudibeck, a stockholder, filed an affidavit on behalf of himself and other stockholders and attacked the indebtedness and charged fraud and collusion. The claims were approved by the court and ordered paid, the property was sold, March 20th, to W. W. Black and F. L. Bell, and on March 29th, Rudibeck filed protest and objection to the confirmation of the sale. On March 30th, L. T. Reed, a stockholder, filed objection to the confirmation of sale. Objection to confirmation was based in substance on the same grounds upon which relief is sought in the complaint. On April 5, 1909, the objections to the confirmation of the sale came regularly on for hearing before the court. The objections were overruled and sale confirmed, and conveyance by the receiver made to defendants, Black and Bell.

There is no evidence before the court that there was any collusion between the defendants Black and Bell with relation to any of the conduct of the business of the defendant company, nor is there any evidence before the court to justify the conclusion that either the defendant Black or Bell had any influence over the board of trustees or exercised any undue influence of any character in any of the proceedings referred to in the complaint. There is no evidence before the court that any information with relation to the conditions or status of the defendant company's property was at any time withheld from the plaintiff. By the evidence it is shown that the plaintiff was at all times advised of the financial condition and status of the defendant company, knew of every act and thing that was done by the board of trustees, and that he was advised more than a year prior to the institution of the foreclosure action that the company was without funds

and he was requested to contribute as a stockholder to the fund in connection with the other stockholders for the purpose of relieving the financial stress of the defendant company and doing the assessment work, and he declined to contribute anything and stated that none of the stockholders would contribute. The plaintiff requested the defendant Bell to foreclose his mortgage more than a year prior to the time when foreclosure proceedings were instituted, and that he be given an opportunity to sell the property. He also asked the defendant Black to use his influence with defendant Bell to secure a foreclosure. After the defendant Bell acquired the mortgage from Mrs. Baldwin, defendant Black made a trip to New York for the purpose of inducing the defendant Bell to withhold foreclosure proceedings, stating to defendant Bell that he believed money could be realized within a year to liquidate the indebtedness. Defendant Bell agreed to wait and at the expiration of a year, no payments having been made, and it being necessary that the assessment work be done to protect the property, sent a circular letter to all of the stockholders among whom was the plaintiff, and set forth the status and condition of the property, stating in substance that unless payment was made that foreclosure would ensue. None of the stockholders responded, except one small holder, and his check was returned when the other stockholders, including the plaintiff, declined to contribute. The assessment work for 1909 was not done, and the time in which it was required to be done expired January 1st next ensuing. This notice was dated November 16, 1908, and informed the stockholders of the indebtedness of the defendant company, and that the receivership was threatened, and his willingness to advance funds in proportion to the stock held by him for Mrs. Baldwin if the other stockholders would do likewise. Defendants Black and Bell since acquiring the property have expended in assessment work on the mining claims approximately $25,000. There is no direct evidence before the court as to the value of this property as mineral land.

The complainant seeks to have Black and Bell declared trustees of the property for defendant company and in the concluding paragraph of his reply brief says:

"The controlling factors in this case are the withholding by Black of $30,000, and the manipulation by the defendants of the corporation's property. Upon these two points the final decision must rest. In comparison with these two points all else is incidental."

I think counsel has over-emphasized this statement and the relation of the defendants to each other and to the defendant company. The evidence shows that the defendant Bell knew nothing about the option to Black until after it was given. There is no testimony showing any collusion between Black and Bell in the carrying out of a common design. Bell did not approve the transaction, and was a stranger to its bearings and relations. As to the defendant Black he could not have taken this option for the company of which he was trustee. The corporation could not traffic in its own stock. He did nothing as an individual that he could have done as a trustee. He did nothing detrimental to or jeopardized any interest of the defendant company. On the contrary he obtained for the defendant company by this act from $16,000 to $20,000 worth of work without expense, and this work was utilized by the defendant company as a basis for its assessment work for the year 1907. This work was done with the consent of the defendant company and the concluding relations between the defendant company and the Trout Creek Company which did the work was adjusted amicably after the commencement of a suit, and with the plaintiff's written consent. There is no evidence presented which would justify any court in finding that there was any manipulation of the defendant company's property by the defendants Black and Bell, which injuriously affected it. So far as the evidence disclosed there was no act of commission or omission on the part of either of said defendants which was intended to or did injuriously affect the defendant company. The securing of the option and selling by Black was a transaction between him and Baldwin, with which the defendant corporation had nothing to do,

and was a transaction which the defendant corporation could not do. Black's act, therefore, was not inconsistent with any duty he owed as trustee to the corporation.

Rem. & Bal. Code of Wash., Sec. 3697;

Tait v. Pigott, 32 Wash. 344;

Barto v. Nix, 15 Wash. 568;

10 Cyc. 577, 578;

O'Neille v. Ternes, 32 Wash. 528.

A trustee may buy property of the corporation when fairly done, and for the purpose of protecting his own interest, when he acts in his individual capacity.

In Twin-Lick Oil Co. v. Marbury, 91 U. S. 587, the defendant, a director of the complaining corporation, loaned the company $2,000 secured by a deed of trust. At a subsequent sale under this deed, the defendant purchased all of the property of the corporation. In an action brought four years later to have the defendant declared a trustee for complainant, on page 590, the court said:

"If it be conceded that the contract by which the defendant became the creditor of the company was valid, we can see no principle on which the subsequent purchase under the deed of trust is not equally so * * * Defendant was at liberty to bid, subject to those rules of fairness which we have already conceded to belong to his peculiar position; for if he could not bid, he would have been deprived of the only means which his contract gave him of making his debt out of the security on which he loaned his money."

In Cowell v. McMillin, 177 Fed. 25, 39, (C. C. A. Ninth Circuit), in discussing a contract made by a director with the corporation, the court said:

"Thus, the case is brought within the rule recognized by the Supreme Court of the United States, namely, that where the director has acted with that candor and fairness which equity imposes as the guide for dealing be-

tween him and the corporation, and the transaction is open and free from blame, the director is not forbidden from making a contract with the corporation, or from entering upon a transaction in which he is personally interested;''

citing Twin-Lick Oil Co. v. Marbury, supra, and other authorities.

In Marks v. Merrill Paper Co.,203 Fed. 16, 20, the court said:

''The authorities are numerous and controlling to the effect that the mere fact that the sale of property of one corporation to a new corporation, the majority of whose governing officers are the same, will not per se vitiate the sale. The question is always one of good faith and fairness, except in cases where public policy intervenes. The facts in the present case bring it within the language of the court in Harte v. Brown, 77 Ill. 226:

'The stockholders had been called together, and they were urged to make advances in proportion to the stock they severally held, and thus relieve the company and preserve its existence, but this they refused to do; and as it could not be preserved, and must come to an end by a sale under the power in the trust deed, no reason is perceived why appellants might not become the purchasers at the sale.

'They were under no moral or legal obligation to advance their own means, pay the debts, and preserve the property for the use of the other shareholders, who had declined to join in making pro rata advances to relieve it from debt.' ''

See also,

Janney v. Minnesota Ind. Expo., 82 N. W. 984;

Saltmarsh v. Spaulding, 17 N. E. 316;

Allen v. Gillette, 127 U. S. 589.

A written notice was sent to all the stockholders asking that pro rata advances be made for the purpose of preserving the property. The stockholders did not respond. The plaintiff personally declined to make any advance. The defendants Black and Bell can not be "deprived of the only means which his contract gave him of making his debt out of the security on which he loaned his money."

The plaintiff knew long prior to bringing this action of the option and subsequent sale; and knew that the contract by Black permitting the Trout Creek Copper Company to do certain work on the property was ratified by the defendant company. The plaintiff with the trustees of the defendant company entered into a written stipulation settling an issue arising out of said contract more than four years before the bringing of this action. The defendant company would not be permitted to raise an action on that account, and the plaintiff does not occupy a stronger position than would the defendant company.

10 Cyc. 963;

28 Am. & Eng. Encyc. Law, 970.

In Twin-Lick Oil Co. v. Marbury, supra, the Supreme Court of the United States, on page 591 said:

"The doctrine is well settled, that the option to avoid such a sale must be exercised within a reasonable time. This has never been held to be any determined number of days or years as applied to every case, like the statute of limitations, but must be decided in each case upon all the elements of it which affect that question. These are generally the presence or absence of the parties at the place of the transaction, their knowledge or ignorance of the sale and of the facts which render it avoidable, the permanent or fluctuating character of the subject-matter of the transaction as affecting its value, and the actual rise or fall of the property in value during the period within which this option might have been exercised."

After stating that the plaintiff had taken no action for four years, while the defendant had been putting his skill, energy and money in the enterprise to make his purchase profitable, the court concludes:

"We think, both on authority and principle—a principle necessary to protect those who invest their capital and their labor in enterprises useful but hazardous—that we should hold that plaintiff has delayed too long."

In Rothchild v. Memphis & C. R. Co., 113 Fed. 476, the minority stockholders did not bring an action until seventeen months after the sale at which the majority stockholder bought the property, and the court held that the complainants were guilty of laches. The plaintiff waited more than three years after confirmation of sale before bringing this action.

The authorities cited by the plaintiff are merely to the effect that a court of equity is not governed by the statute of limitations, that a mere lapse of time will not impute laches, and that the court is not bound by hard and fast rules in the determination of what will constitute such laches as will bar a recovery.

19 Am. & Eng. Encyc. of Law, 162;

15 Am. & Eng. Encyc. of Law, 1206;

Michoud v. Girod, 4 Howard, 4 How. 504, 561;

Sullivan v. Portland, etc. R. Co., 94 U. S. 806;

Stearns v. Page, 7 How. 819;

Gladden v. Kimmel, 99 U. S. 202;

Payne v. Hook, 74 U. S. 430;

Stevens v. Grand Central Mining Co., 133 Fed. 28;

Burns v. Cooper, 140 Fed. 279;

Davis v. Louisville Trust Co., 181 Fed. 22;

16 Cyc. 152, and cases there cited;

Street's Federal Equity Practice, Sec. 211, 212.

It is unnecessary to determine to what extent a court of equity, while not considering itself bound by a state statute of limitations, will rely upon such a statute for aid in determining a doubtful case, because I am convinced from the facts and circumstances here presented that the plaintiff has been guilty of such laches as should preclude his recovery by the operation of the rule as laid down in Twin-Lick Oil Co. v. Marbury, supra, without resort to the statute of limitations. While the court is not bound by hard and fast rules, yet no such case is here presented as would justify the court in disregarding the rules which have been laid down merely because it is recognized that a wide discretion is vested in the court which applies them.

I am further of the opinion that the action of the state court in approving the claims of the defendants Black and Bell over the objections of the minority stockholders, and in confirming the sale after similar objections had been made, is *res judicata* of this suit. The same questions were involved and were necessarily determined by the court when, notwithstanding the objections made, it approved the claims and confirmed the sale. Counsel for plaintiff contends that the sale not having been confirmed, there was no presumption that the court would confirm it, consequently the cause of action did not arise until after the confirmation of the sale, and could not have been determined before the confirmation. The rule upon which he relies is stated in 23 Cyc. 1314, as follows:

"A judgment is not and cannot be an estoppel as to facts which did not occur until after the judgment was rendered and which were not involved in the suit in which it was rendered."

It seems that counsel has confused the acts of the defendants with the act of the court. The acts of the defendants charged by the plaintiff as affording ground for

relief occurred prior to the confirmation, and the confirmation was a determination by the court that those acts were not sufficient to prevent a confirmation of the sale which the plaintiff is here seeking to set aside. The only distinction between that action and this is that there the plaintiff was attempting to prevent the court from doing that which he asks this court to undo. The same elements entered into the court's determination there as are involved here—the prior acts and conduct of the defendants, and no additional element was introduced by the act of the court in the confirmation. The relief here sought is in effect the setting aside of the judgment of the state court in confirming the sale. The fraud upon which the hope of such relief is based was involved in the issues raised in the state court and was necessarily determined by its judgment.

Intermela v. Perkins, Filed in this court, April 20, 1914, ... Fed. .....;

United States v. Throckmorton, 98 U. S. 61;

Vance v. Burbank, 101 U. S. 514;

Cromwell v. County of Sac, 94 U. S. 351;

Stockton v. Ford, 18 How. 418;

Mitchell v. First Nat. Bank Chicago, 180 U. S. 471; 480;

2 Black on Judgments, 504;

Willoughby v. Chicago, etc., 25 Atl. 277;

Hearst v. Putman, 77 Pac. 753.

If the contention of the plaintiff should prevail in this instance, in all cases where a judgment is sought to be set aside on the ground that it was obtained by fraud, a plaintiff might contend that the fraud of the plaintiff

was not committed until the judgment was entered, and yet the Supreme Court of the United States has laid down very clearly the rule that relief cannot be had unless the fraud is extrinsic or collateral, and that if it was involved in the issues it was determined by the judgment.

United States v. Throckmorton, supra.

It is needless to discuss the further contentions of the parties. From what has been said the conclusion is inevitable that the complainant's bill must be dismissed.

Decree accordingly.

JEREMIAH NETERER, Judge.

Indorsed: Filed in the U. S. District Court, Western Dist. of Washington, May 18, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. (In Equity).

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL, and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Decree

This case come on to be heard at this term, and was argued by counsel; and thereupon upon consideration thereof it was ordered, adjudged and decreed as follows, namely:

That the above entitled action be, and the same hereby is, dismissed with prejudice.

That the defendants, W. W. Black and Frank L. Bell have judgment against the complainant for their costs and disbursements in this action, to be taxed as provided by law.

Done in open Court. Dated this 23d day of June, 1914.

JEREMIAH NETERER, Judge.

To the making and entry of the foregoing decree and each and every part thereof the complainant excepts and his exceptions are allowed.

JEREMIAH NETERER, Judge.

O. K. as to form, Walker.

Indorsed: Decree. Filed in the U. S. District Court, Western Dist. of Washington, June 23, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

[Excerpts from Petition for Rehearing]

United States District Court, Western District of Washington, Northern Division.

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, Defendants.

No. 2112

Petition for Rehearing

Comes now the complainant and respectfully petitions the Court for a rehearing and re-consideration of the above entitled cause on the grounds and for the reasons hereinafter set forth.

The issues presented and the legal questions involved in this litigation are both numerous and complicated and a study of the opinion rendered leads us to feel that in the limited time allowed for the preparation of briefs some of the points involved were not as fully and clearly presented as fairness to Court and the parties litigant demands. Hence, we request the privilege of presenting, as briefly as we may, a single point which we deem to have been insufficiently presented.

The complaint, in the case of Bell vs. Sunset Company in the Superior Court of Snohomish County, was the ordinary form for the foreclosure of a mortgage, though requesting the appointment of a receiver pendente lite. The entire record of the Snohomish County case is in evidence as complainant's Exhibit "B," from which it appears that a temporary receiver was appointed ex parte at the time of the filing of the complaint without any proper or sufficient service having been had on the Sunset Company (the only service attempted having been the service of a twenty day summons on an officer of the

Company in the City of New York). Thereafter, on the appearance on behalf of the Company of Attorney Locke, the appointment of said receiver was attempted to be made permanent by an order of the judge pro tem, though no additional bond was ever given by the receiver. Thereafter the foreclosure phase of the suit was abandoned, leastwise no further steps were taken in that direction and the property here involved was subsequently sold by the receiver under an order of Court purporting to authorize such sale.

It is our contention that a receiver appointed in a real estate foreclosure proceeding in this State cannot be legally authorized or empowered to sell or convey the mortgaged property, nor, indeed, can a receiver be appointed at all in a foreclosure suit, except in cases of emergency to prevent waste and for the preservation and protection of the mortgaged property during and pending the orderly course of the foreclosure proceedings, which includes the sale of the property under a decree of foreclosure in the manner provided by statute.

As heretofore noted and as clearly appears from the record, no service of summons was ever had on the Sunset Company in the State of Washington, though after the appointment of a temporary receiver the record shows that one D. W. Locke filed a notice of appearance as attorney on behalf of the corporation and entered into a stipulation for the appointemnt of a judge pro tempore and on the same day an order was entered by said judge pro tempore making the appointment of the receiver permanent. No defense or subsequent appearance was made on behalf of the corporation.

Attorney Locke testified that the complaint and summons in said cause were placed in his hands by defendant Black, who, while stating that there was no defense whatever to the suit, nevertheless, requested him to enter an appearance on behalf of the corporation. This testi-

mony is in all respects confirmed by the testimony of Black, himself. Since there was no jurisdiction in the Superior Court in the absence of a voluntary appearance we confidently assert that no jurisdiction was conferred through the appearance made by an attorney under the circumstances disclosed in this case. * * *

We therefore, urge in conclusion that the entire proceedings had in the Snohomish County Court were and are absolutely void. Summing up the foregoing argument inversely; first, for the reason that the apparent jurisdiction of the person of the defendant corporation was conferred through the action of defendant Black exercised beyond the scope of his authority for the deliberate purpose of forfeiting the rights of his corporation. Second, though it be assumed that jurisdiction of the Sunset Company was obtained, yet the Court had no power, jurisdiction or authority to authorize or confirm in a foreclosure proceeding a sale by the receiver of the mortgaged property.

Respectfully submitted,

O. C. MOORE,
GEORGE H. WALKER,

Solicitors and Counsel for Complainant.

Received a copy of the within Petition for Rehearing due and timely service whereof is hereby admitted this 11th day of June, 1914.

ROBT. McMURCHIE,
L. L. BLACK,

Attorneys for Defendant.

Indorsed. Filed in the U. S. District Court, Western Dist. of Washington, June 23, 1914, Frank L. Crosby, Clerk, By E. M. L. Deputy.

[Decree and Order Denying Petition for Rehearing]

United States District Court, Western District of Washington, Northern Division.

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, Defendants.

No. 2112

Filed July ....., 1914.

GEORGE H. WALKER,

O. C. MOORE,

For Complainant.

L. L. BLACK,

ROBERT McMURCHIE,

For Defendants.

NETERER, District Judge:

After a careful consideration of the pleadings and the record in this case, I am of opinion that the petition for rehearing is not well founded and should be denied.

It is so ordered.

JEREMIAH NETERER, Judge.

Indorsed: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 28, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. (In Equity).

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Statement of Facts

Be it remembered, that the above entitled cause came regularly on for hearing in the above entitled court on April 12, 1914, before the Hon. Jeremiah Neterer, Judge of said court presiding; plaintiff appearing in person and being represented by his attorneys, Geo. H. Walker and O. C. Moore, and the defendants, W. W. Black and Frank L. Bell, separately appearing in person and W. W. Black appearing also by his attorneys, Robert McMurchie, J. A. Coleman and Lloyd L. Black, and defendant, Sunset Copper Mining Company, a corporation, appearing not.

Whereupon, said cause being called for trial, proceedings were had and testimony was taken as follows, to-wit:

John Sandidge, a witness called on behalf of the complainant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. WALKER:

I am a lawyer and reside in Everett. I was attorney for plaintiff in the case of Frank L. Bell vs. the Sunset Copper Mining Company in the Superior Court of Snohomish County, Wash., for the foreclosure of a mortgage

wherein a receiver was appointed for said corporation and its property sold by said receiver. The matter of my representing the plaintiff in said suit was first mentioned to me by Judge W. W. Black. He told me that Mr. Bell contemplated such an action and that he had recommended to him that he employ me in the matter, and I think he told me that Mr. Bell would prepare and serve the complaint in New York and then forward it out here to Everett. This was subsequently done and I took charge of the case from that time on and looked after it as an attorney. I could not say without seeing the records just what papers I prepared in the case. Mr. Bell, according to my recollection, came to my office and dictated some affidavits, and Judge Black dictated an affidavit that he made. During the course of the proceedings I talked the case over a number of times with Judge Black and generally discussed all steps of importance in the case with him. The defendant corporation was represented by W. D. Locke. My recollection is that there was no answer filed in the case and I do not recall that there was any issue made between Mr. Locke and myself. I think I discussed the claims filed by the creditors with Judge Black, and, while he said there were some claims that were not just, he did not personally care to object to them. My recollection is that there was no contest about any of the claims between myself and the attorney for the corporation. I think Judge Black stated that he had held Bell off from foreclosing the mortgage as long as he could and that he could not make any defense.

CROSS EXAMINATION.

BY MR. McMURCHIE:

Mr. Fogarty was appointed receiver and my reference was to claims presented to the receiver. There was nothing, so far as I observed, in the conduct of Judge Black that indicated that he wanted to be unfair to any of the stockholders of the corporation. My recollection is that Judge Black said the corporation had no defense to the foreclosure suit and I knew of no defense to the foreclosure or to the appointment of a receiver. There was no suggestion that a defense could be made, except what is made in the record itself.

RE-DIRECT EXAMINATION.

BY MR. WALKER:

I understood that Judge Black was the manager and a trustee of the defendant corporation. He took no steps towards defending the action so far as I know. Judge Black and myself have been close personal friends. I was more or less familiar with the affairs of the Sunset Company before this suit arose and I am not sure but that most of the things that I have been testifying that Judge Black told me, were things that he told me before this suit arose. I do not remember that he talked much to me about it after the suit was instituted. I think I had the knowledge that I had gotten from him before that time.

D. W. Locke, a witness called on behalf of the complainant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. WALKER AND MR. MOORE:

My name is D. W. Locke. I reside at Everett and I am an attorney at law, having practiced in Everett since 1906. I was attorney for the Sunset Copper Mining Company in the case of Bell vs. the Sunset Copper Mining Company in the Superior Court for Snohomish County for the foreclosure of a mortgage. I was retained by Judge Black to represent the defendant corporation in that suit and he told me to represent the Mining Company in the foreclosure proceedings. After having been retained as attorney I looked over the complaint carefully and got the records of the Company, such as were at hand, and investigated whether or not the trustees had authority to execute the mortgage set up in the complaint. I was employed as attorney to look after the interests of the defendant in the foreclosure proceedings and I took that complaint and looked over it just as carefully as any other case that was put in my hands, and I made up my mind as attorney that we had no defense and I did not make any. I do not recall anything about the presentation of any claims to the receiver. I have known Judge Black quite a number of years and he and I have been on friendly terms. I remember Fogarty was appointed receiver for the company and I think he was receiver at the

time I was retained. It was stipulated between myself and the attorney representing plaintiff that a judge pro tem be appointed and I think I deferred to the wishes of my client, Judge Black, as to who the judge pro tem should be. Judge Black suggested that Mr. Anderson be appointed and that was agreed upon.

"Q Examine page 18 of Plaintiff's exhibit B which I now hand you, being a transcript of the records and files in the case of Bell against the Sunset Copper Mining Company in Snohomish County. Have you read it?

A Yes, I have read it.

Q Now, is it not true that the appearance indicated on this page 18 is the only appearance you ever made in the case?

A I only made one appearance in the case." (Tr. 32).

After studying the allegations of the complaint and the records of the Sunset Copper Mining Company, which I got from its office and from the receiver, I was satisfied there was no defense to the foreclosure of the mortgage and subsequently I made an appearance in the case, as shown by the record. I wanted my appearance in so I could take whatever steps were necessary. It is my recollection that at least two or three weeks transpired, after Judge Black told me to act as attorney, before the case was tried. I was in Court at the time of the entering of the decree by Judge pro tem.

Mr. J. B. Fogarty, a witness called on behalf of the complainant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. WALKER:

My name is J. B. Fogarty. I am a lawyer and have lived at Everett, Wash., since 1894, and have been engaged in the practice of law during practically all that time. I have known Judge W. W. Black during my entire residence in Everett. During the past eight or ten years our associations have been rather intimate in a political way. I know

Judge Black like I know a great many lawyers in our part of the country. Judge Black was Judge beginning in 1905 up to 1913. I was not intimate in a professional way beyond trying lawsuits in his Court. I was receiver for the Sunset Copper Mining Company in the case of Frank L. Bell against that Company. The first suggestion of my becoming the receiver was made to me by Judge Black, who asked me if I would serve if appointed and I told him I would. I sold the property of the Company as receiver to Judge Black and Frank L. Bell and certain claims theretofore filed and allowed were accepted in payment of the purchase price. I do not think there was any contest over the allowance of any claims filed. I do not remember if there was any. I will put it in that way. I remember a proceeding in court one day before a judge pro tem in which witnesses were examined and notes were introduced in evidence. I think that was the day the order appointing the receiver was made permanent. I remember Mr. Locke and Mr. Sandidge were there, and it is my recollection that they introduced the notes and mortgage in the evidence and went through the form of proving them. There was a trial in Court on a hearing of some sort. They proved the notes and mortgages. After I was appointed permanent receiver certain claims were presented to me as receiver. I made an investigation as to the legality of all of the claims except two. One was the claim of Mr. Bell that was based on a judgment of the Federal Court rendered in New York. The other was the claim of Mr. Bell based upon the Baldwin notes and mortgage, for which a judgment had been rendered in the case of Bell against the Sunset Copper Mining Company in Snohomish County, Washington. I believe I investigated all the other claims. I talked with Judge Black, and with attorneys of the parties, with Mr. Rudabeck and with his attorneys, Hathaway and Alston, about these matters during the receivership. I talked with Mr. Rudabeck and his attorneys, Hathaway and Alston, in regard to contingent liabilities or liabilities of Mr. Baldwin or Mr. Bell or others to the corporation. I investigated to see whether or not the claim on behalf of the Sunset Copper Mining Company existed as against Mrs. Baldwin. I read the constitutional provision and looked up some law on the matter and consulted with Hathaway and Alston, who represented Mr. Rudabeck, and I petitioned the Court for directions what to do. There was quite a full hearing upon my petition. Mr. Rudabeck was represented by counsel, Mr. Black, Mr. Locke

and Mr. Sandidge were there and my recollection is that evidence was taken. The whole matter was gone into in regard to the liability of the Baldwin estate or the liability of Mr. Bell to pay the alleged unpaid part of the stock held by Baldwin and on the part of anyone who bought stock and paid less than par value for it. I understood that hearing was before Judge Still on the merits of the proposition. Rudabeck and his attorneys, Hathaway and Alston, made a demand on me to begin an action to recover on these contingent liabilities, and without consulting anybody I petitioned the Court for directions. A hearing was held on that petition before Judge Still. Mr. Rudabeck, claiming to be a stockholder in the Sunset Copper Mining Company, was present and represented by counsel. Mr. Locke representing the Copper Mining Company and Mr. Sandidge representing the plaintiff, and Judge Black were there. Argument was made before Judge Still. The demand of Mr. Rudabeck to me was made part of my petition. I believe the order appearing at page 49 of this Exhibit was the order fixing the time for hearing upon my petition, and directing Rudabeck as a stockholder, and other persons interested, to appear at the time stated.

THE COURT: I will state in the record here that I will assume that these are copies of the orders.

THE WITNESS: It is my recollection they are copies.

MR. WALKER: We do not dispute the record at all.

I did not investigate as receiver the claim presented by the defendant Bell, because one of the claims was a judgment of a Court of record and I did not think it could be impeached, it seemed to be fair on its face, and the other was a judgment of the Superior Court of Snohomish County, in which this proceeding was pending and in which I was appointed receiver.

Mr. W. W. Black, a witness called on behalf of complainant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. WALKER:

My name is W. W. Black and I am one of the defendants in this action. I reside at Everett, Wash., and was judge of the Superior Court for Snohomish County from January 1905 to January 1913.

I was a trustee of the Sunset Copper Mining Company practically all the time since 1903 and I claimed to be general manager of the Company and acted in that capacity during all that time, though my authority to act was sometimes disputed by the eastern officers and stockholders. Most of the trustees of the Company lived at Glens Falls, N. Y. A stockholders' meeting was held Feb. 8, 1904, and another on January 14th, 1908, and I don't know if there were any stockholders' meetings between those dates. My impression is that there was an annual meeting in each year, but I cannot tell exactly. I did not do the physical work of writing up the minutes as a rule. I employed my clerk. I was the secretary of the Company in 1904 and for a good part of the time subsequent to that date. From time to time resolutions directed against me were adopted and sent to me by the trustees in New York to the effect that I should not act for the Company. I did not place these resolutions in the minutes of the Company because I did not want them to appear there. The Trustees in New York sent me copies of the minutes of the meetings or at least some of them. I don't know whether they sent me all of them or not. When I received these minutes I kept them among the papers, but did not paste them in the minute book. I kept all that they sent me among the papers. I have collected and brought into Court all of them that I can find. I kept a lot of such records at the Court House while I was Judge of the Superior Court, and we had a fire which burned up the entire Court House and most of my papers, except bunches of papers here and there saved by the lawyers at the time of the fire. I did not paste these minutes of meetings held by eastern stockholders in the minute book nor did I direct my clerk to do so for the reason that I had an idea that these eastern peoeple were conspiring against me. I had no opportunity to be present as a board member and I was always guarding myself, so I kept them faithfully, but I did not paste them in the minute book. For the most part the stock-

holders' meetings were held in Everett, Washington. I have an impression that some of them were held in the east. A majority of the trustees lived in New York. I insisted on having a majority of the board residents of Washington, but Mr. Baldwin insisted on having a majority of the board who resided in New York State. Mr. Baldwin had under his control stock enough to enable him to elect all the trustees and we could not help ourselves. The Baldwins and the Baldwin family and their friends held about 1,750,000 shares and Baldwin always got proxies for that. Mr. and Mrs. Baldwin had at least more than 1,500,000 shares of stock. They were always in a position to control the election. The corporation was originally capitalized for $2,000,000 divided into two million shares of the par value of one dollar per share. The Company had no money and no assets and the only way we could raise money to develop the property was to try to get somebody to buy stock and we had no stock belonging to the company and therefore in 1903 the capitalization was increased to $3,000,000. W. H. Baldwin of Glens Falls, N. Y., bought 200,000 shares of the new capitalization and paid the Company $5,000, 2½c a share, therefor, which is what the Company agreed to sell it for and what he agreed to pay for it. We made a bargain with Mr. Baldwin and got all the money out of him that we could get and a good deal more than we could have received from anybody else. The market price of the stock was below 2½c per share. In fact, there was no market for it at any price. The Company never received any further consideration for the 200,000 shares so issued to Mr. Baldwin. As a basis for increasing the capitalization I turned into the Company a number of mineral claims, I think some fifteen or twenty. Part of these claims were known as the Mountain Side Group for which I had given 6,000 shares of stock of the Company and about $1,100 cash, and the Company in turn issued me 6,000 shares of stock and paid me about $1,100.00 and some odd dollars in cash. The Mountain Side Group was considered then a very valuable group and was immediately contiguous to the other property of the Sunset. I had what I thought was a moral claim upon the group. I felt I had an interest in them. I felt that I had some sort of a hold on account of a cloudy title. I talked the matter over with the Company and told them that by reason of my being connected with the Mountain Side Group I could probably buy them, and that I would buy them and turn them over to the Company for the money I would have to advance. I did this.

The Company gave me the money and stock I had advanced. I was trustee of the Company, working for the Company's interest and did not receive any profit or anything for my interest, or supposed interest in the Mountain Side Group. I made the best trade for the Company that I knew how. We got the Mountain Side Group and other claims as a basis for the increase of the capital stock. I made no profit out of the transaction. There was no subscription for the increased capitalization provided for in 1903. The stock was increased from 2,000,000 to 3,000,000 shares but not subscribed. The mineral claims of the Sunset Company were bought at the receiver's sale by Mr. Bell and myself for $40,000, $2,000 in cash and the cancellation of $38,000 of the claims filed by Mr. Bell and myself with the receiver.

In regard to the judgment obtained by Mr. Bell in the United States Court, allowed by Mr. Fogarty as a receiver, I talked to Fogarty about it, and told him I did not want Mr. Bell to get that much for his services, but that it made no practical difference whether this claim was allowed or not because I knew the Company was bankrupt. I did not direct any resistence to be made. We understood between ourselves that the assets of the Company were not worth the amount of all the claims anyway. I believed that legally Mr. Bell had the best of us. He had been employed as attotrney by Baldwin, the President of the Company. I had a claim against the Company for more than Ten Thousand Dollars. Part of it was for a judgment and part of it was for money advanced for which the Company had given me a mortgage, and part of it was for other money advanced not secured by mortgage, and part of it was for salary. And I could not see any practical difference whether Bell's judgment was allowed or not.

CROSS EXAMINATION.

BY MR. MC MURCHIE:

I never at any time knew of any defense in law or equity in favor of the Sunset Copper Mining Company against the mortgage and notes executed to Mrs. Ellen C. Baldwin, the surviving widow of W. H. Baldwin, deceased, and held and foreclosed upon by Bell in the suit wherein property of the Company was sold by a receiver.

I am now of opinion, on further reflection, that stockholders' meetings were held annually between 1903 and 1908, and that the minutes thereof, made under my supervision, were burned in a fire which destroyed the Court House in which my office was located.

Mr. Baldwin became identified with this mining property in 1903 and following this time the mining company received from time to time from Mrs. Ellen C. Baldwin the full amount mentioned in the mortgages and in the notes sued upon by Bell in the suit of Bell vs. Sunset Copper Mining Company in Snohomish County, Washington. This money was actually received by the Company and used by it in developing its mines and in furtherance of its business. Up to August or September, 1904, about $30,000.00 was spent in putting in machinery and developing the property. After that time the active work of mining was practically at a standstill, except to do the assessment work to protect the claim which was always at least Thirty-six Hundred Dollars ($3600.00) a year and generally more. In 1906 I personally advanced the larger part of the money to do the assessment work, receiving a mortgage upon the property for part of the amount advanced by me personally. In 1908 Mr. Bell and I furnished all of the money with which to do the assessment work, and have furnished all money since that time for doing assessment work; caring for property; surveying and obtaining patents and expenses connected therewith.

In the summer of 1907 Mr. Bell and I locked horns. I found that Mr. Bell had purchased the mortgages and notes given by the Company to Mrs. Ellen C. Baldwin and Mr. Bell wanted to foreclose his mortgages. The Company had no money and he did not want to advance any. I went to the City of New York to see Mr. Bell and did see him after he had written me he intended to foreclose these mortgages. I spent several days with him with reference to the affairs of the Sunset Copper Mining Company, including the matter of his foreclosing the mortgage. I was opposed to his foreclosing the mortgage. I then told him if he attempted to foreclose that mortgage that I would give him all the fight that was in me. I tried to impress upon him that I was quite a fighter. I would make it cost him all I could and would delay the matter and do everything to stick pins in him if he went ahead on this line. I told Mr. Bell that if he acted right and did not foreclose the mortgage until I

was satisfied that he had given me a reasonable time to see if I could interest other people and be able in some way to take care of the notes secured by mortgage, then I would not raise any objections and I would not try to make it expensive for him and my attitude would be changed if he would give us the time that I otherwise could get by delay. As a result Bell agreed to wait until I had a reasonable opportunity to determine whether I could secure any money or not, and Mr. Bell advanced half of the money to do the assessment work in the year 1908 and I advanced the other half and Mr. Bell refrained from foreclosing for more than a year. When he did begin the foreclosure I did not know of any defense of any kind to his action for I knew the corporation had received and expended the money mentioned in the notes. The Company had no other resources and could not do its assessment work.

Mr. G. J. Buchler, a witness called on behalf of the complainant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. WALKER

I am the complainant in this action and my name is Gustavus J. Buchler, and I am a citizen and resident of the State of Penn. I own 58,250 shares of the capital stock of the Sunset Copper Mining Company acquired between March 1898 and March 1899.

I first learned that the Sunset properties were to be sold from an Index, or Everett paper, sent to me by Mr. Holmes on or about the 23rd day of February, 1909; that was the first knowledge that I had that Bell had brought suit against the Sunset Copper Mining Company in Snohomish County. I afterwards learned that the property had been sold by a letter received from Schuyler Duryea written from Everett dated April 6, 1909, after the sale had been confirmed. I learned from the same source that Black and Bell were the purchasers.

I thereupon communicated with a number of stockholders in regard to the institution of a suit to recover the properties of the Company, and subsequently, fearing that the properties would be entirely lost, I instituted this suit to safe-guard the interests of the Company.

CROSS EXAMINATION.

BY LLOYD L. BLACK:

I received a letter from W. W. Black dated August 8th, 1903, in which I was notified that there would be a stockholders' meeting on the 22nd August 1903, for the purpose of increasing the capital stock from $2,000,000 to $3,000,000. I declined to sign the proxy enclosed. I received a letter from W. W. Black dated August 22nd, 1903, being defendant's Exhibit 6. I also received the paper, marked Exhibit 7 and 8. The words "answered January 9, '04" and "answered February 7, '04" were written by me. The figures written on the letters are the dates of my answers to those letters.

In 1907 I secured an attorney for the purpose of bringing suit, because the stock had been increased from $2,000,000 to $3,000,000. I was informed in the year 1908 of the fact of the pendency of the foreclosure suit on the Bell mortgage or the Baldwin mortgage. I knew that the property was to be sold at a receiver's sale, before the sale. I knew before the sale of the property that Mr. Bell had secured a judgment in New York, and I knew before the sale of the property that it was to be sold to pay the debts. I knew in 1907 of the existence of the mortgages to Mrs. Baldwin and knew of the notes. I had been informed in 1908 of the existence of the mortgages and the debts owing by the Company. I received this information from defendant Black. I took an unexpired option for the purchase of a majority of the stock, being Mrs. Baldwin's interest, together with the claims Mrs. Baldwin had against the Sunset Copper Mining Company. Mr. McGhinidy, Mr. Holmes and Mr. Powers joined with me in obtaining this option. This option was received from Frank L. Bell by Judge Black, his attorney-in-fact.

I saw a circular from Mr. Bell sent out to another stockholder stating that the mortgage would be foreclosed unless the stockholders would go in with him and give pro rata to the Company to do assessment work. I also received a letter from Mr. Holmes about this circular.

At the time I took the option just referred to, access to the books of the Company at Everett was offered me by the defendant Black, but at the same time he stated that the records were not complete as the safe had been broken open and the records removed.

From February 1908 until I left Everett I had business relations with Mr. Holmes. After leaving Everett I kept up constant correspondence with him until after the sale of the property, but he was not acting as either my attorney or my agent. I received a letter from Mr. Holmes of February 18th, 1908, informing me that Mr. Rudabeck, as stockholder, was trying to stop either the sale or confirmation of it. I knew about the time of the sale or shortly after from correspondence with Schyler Duryea that Mr. Rudabeck had made objections and what those objections were.

On March 27, 1909, I telegraphed Judd, an attorney of Everett, with whom I had had correspondence in 1908 and 1909 by letter and telegram, relative to the pendency of the Bell suit and the receivership, that I was in favor of taking the matter to the Federal Court. At the time I sent that telegram to Mr. Judd I think I knew that the property had been bid in by Black and Bell. In 1908 when I purchased the option before I left Everett I looked into the affairs of the Company to find out how valuable the option was, and I went to the Court House and received a copy of the mortgage.

W. W. Black, produced as a witness in behalf of defendants, testifies as follows:

BY MR. MC MURCHIE:

During the course of the proceedings in the Superior Court with reference to the foreclosure of the Bell-Baldwin mortgages and with reference to the appointment of a receiver and the proceedings of the receivership, I was Judge

of the Superior Court and felt that I was disqualified from acting in that case. Judge Frater, Judge Still and Judge Joiner were called in to preside in hearings held in the course of the litigation, and F. A. Anderson was appointed Judge pro tem. The judges were selected without any suggestion from me as to who were to be selected. It was very hard to get judges from other counties at that time. I told Mr. O. C. Gaston, my Court Stenographer, to get what Judges he could. In regard to the appointment of Mr. Anderson as judge pro tem, Mr. Gaston reported to me that he was unable to get another judge and the attorneys for the plaintiff and defendant stipulated that Mr. Anderson should act as Judge pro tem. I did not have anything to do with his selection. When he was selected I approved the selection. This being necessary for me to do under the law of this State as Judge of the Superior Court. After the property was purchased at the receiver's sale I expended a few hundred dollars more than Mr. Bell expended. The money expended by Mr. Bell was forwarded to me and I spent a like amount and some more; all of which was expended on the Sunset in doing assessment work and securing patent. Previous to the foreclosure I had given Mr. Buchler an option to purchase the Baldwin stock, notes and mortgage. During this period we expended a little over Thirty-six Hundred Dollars a year for assessment work. Previous to the foreclosure of the Bell mortgage and the appointment of a receiver Mr. Buchler asked me to let Mr. Bell foreclose the mortgage. He wanted Bell to foreclose the mortgage, buy the property and let him sell it, and I refused to do so. At all times I gave Mr. Buchler all the information about the Sunset he sought. I turned over the books to him and everything for examination. I think Mr. Buchler knew, when he was at Everett, practically everything that I knew about the Sunset. None of the money advanced by me or by Mr. Bell has ever been repaid directly or indirectly and we never received anything from the mine. Neither Mr. Buchler or any other stockholder or any other person has paid or offered to pay any money I have expended.

In regard to the judgment obtained by Mr. Bell in the Federal Courts of New York State I had no knowledge of the pendency of the action until it was sent out to be proved before the receiver.

I kept minutes of the meetings of the stockholders and I assume they were destroyed in the fire when the Court House burned. When I testified before I was hazy, but I got to thinking the matter over and I remembered then where meetings were held and that the minutes were kept and it was my habit to keep them at the Court House.

Frank L. Bell, a witness for defendants, being first duly sworn, testified as follows:

BY MR. MC MURCHIE:

I am one of the defendants in this action, and live at Glens Falls, N. Y. I am an attorney at law and after the death of Mr. W. H. Baldwin Mrs. Baldwin came to me and said that her husband told her that if he died, or anything happened to him, to come to me and I would protect her. I knew many of her relatives and they came to me and asked me to assist her and I finally consented to do so and so I acted as her attorney and severed my connection with the company. I took the stock, mortgage and bonds as a protection to Mrs. Baldwin. Mrs. Baldwin had made an absolute assignment of the mortgage, notes and stock to me and she had no moral or legal obligations from me to pay her anything. While it was in my name and I had the unqualified right to sell or dispose of it it was my intention to treat Mrs. Baldwin exactly as though it was all in her name and such intention has existed from then till now. The certificates representing Mrs. Baldwin's stockholdings in the company were endorsed in blank and turned over by her to me, though they have never been transferred on the books of the Company, and I now find that one certificate for two hundred thousand (200,000) shares issued in 1904 was never really delivered to me.

I have been a practicing attorney in the State of New York for twenty years and I am acquainted with the laws of the State of New York with reference to the rights of corporations not organized under the laws of the State of New York, doing business in that State, and the right of creditors of such corporations to bring actions in said

State in the Federal Court, and I am familiar with the holdings of our Court in that respect. The failure of a corporations to file a copy of its certificate of incorporation with the Secretary of the State of New York or to obtain a license authorizing it to do business in the State of New York, do not render a contract made by the corporation within the State of New York illegal or void. The New York courts and the United States Supreme and Federal cases hold that the only effect of the statute is to deprive the corporation which fails to file a copy of its charter and obtain a license, of the right to sue in the courts of the State; that in all other respects the contract is perfectly valid. The case in the 199 New York, I think for the first time holds squarely that the corporation will not be heard when sued upon a contract made by it, to set up its default as a defense.

In August 1907, I was the owner of the notes and mortgages that have been referred to herein as the Baldwin mortgage. I had an interview with the defendant Black in the City of New York at about that time and told him that I was willing to put up money to do the assessment work, survey the claims, obtain patents in the proportion that the stock held by me bore to the total amount of stock held by other stockholders, if they would put up their proportion of the amount. If they did not I would foreclose the mortgage. The judge said he would fight it and would delay it and make it just as expensive for me as he could. Finally it was agreed between us that I would give him a reasonable time to arrange matters. I insisted that that should be done within a year. He would not agree to that, but I was positive that a year was enough and told him I should proceed after that time unless the other stockholders would contribute their part. He said if I would make it a reasonable time he would not make it expensive for me. I did not ask him to assist me nor cooperate with me, nor to lend me any aid, and he did not agree to it, and I have never asked him for aid, and in all my dealings with him there has been but one time that our minds met and agreed. I did forbear from foreclosing the mortgage for over a year. I made an effort to ascertain whether the other stockholders would do anything to protect their interest in the property. I sent a circular letter to all of the stockholders, including the complainant, stating what the condition of the company was, what was required in

the way of money, and that if the stockholders would contribute their proportionate part I would put up my share if a considerable number accepted the proposition. I received some sixty or seventy dollars and no more, and I returned that. I sent a number of these circulars to Mr. Buchler asking him to mail them to such stockholders in Philadelphia as he knew there. I think this was all done about November 10th, 1908. I saw Mr. Buchler in the summer of 1908 when he told me he had been to Everett and told me he had had an option on the Sunset property. I told him that I owned the stock and mortgages and notes formerly held by Mrs. Baldwin. I told him if the stockholders would not put up their proportionate share I would foreclose the mortgage and asked him to put up his share and he said he would not do so and would not put up another dollar and told me the other stockholders would not put up anything. Mr. Buchler then suggested that I foreclose the mortgage and let him handle the property after foreclosure. I refused to do this until I had made the offer to the other stockholders. The reason he wanted me to foreclose the mortgage he said was because he thought he could sell it as a whole but could not sell a controlling interest. I was not the attorney for the Sunset Mining Company at that time during the process of the foreclosure of the mortgage or the receivership suit. I severed my relation soon after April 1906. I never was a trustee of the corporation except for one day in Everett when they were making an exchange of trustees; some resigning, and they put me in to fill up. I was elected and qualified, and at the conclusion of the meeting resigned. I employed Mr. Sandidge to act as my attorney to foreclose the mortgage and institute this suit represented by Exhibit B. After I found that Judge Black could do nothing with the property, I wrote him to give me the name of some attorney who would foreclose the mortgage with as little expense as possible. I had met Mr. Coleman and wrote the Judge about him. The Judge wrote me that Mr. Coleman might be expensive and suggested among others Mr. Sandidge, whom I had also met and remembered. I employed Mr. Sandidge and drew a complaint and sent it to him. Mr. Sandidge changed the complaint in form and sent it back to me asking me to verify it, which I did, and returned it to him. I knew nothing of the appearance of Mr. Locke nor as to his being employed to act on behalf of the company until March 1909, when Mr. Locke told me something

about a claim against Baldwin. I told him that Mr. Baldwin was dead, that his estate had been settled and that there had been realized but a few hundred dollars. The estate had been settled and the total amount realized was between Twelve and Thirteen Hundred Dollars. I did not know that Mr. Fogarty was receiver of the corporation until I reached Everett.

The only time Judge Black and I agreed was the night before the sale when I talked to him about bidding on the property. We agreed that we would bid Forty Thousand Dollars which was substantially the amount represented by the debt secured by the Baldwin mortgages and notes and what we had advanced to the receiver on certificates to do the assessment work, and that if anybody bid more than Forty Thousand Dollars that we would let them have it. This is the only talk I ever had with the Judge upon any occasion or upon any subject when he agreed with me or co-operated with me. At other times he tried to get all out of me he could. There was no other bid made. After that in Everett we had a meeting with a number of the stockholders when Judge Black, in behalf of himself and myself, offered to allow all stockholders to come in and share in this bid, paying on the same basis that we did, Forty Thousand Dollars. I was present at the meeting and assented to it and would assent to it now. In making that offer I offered to throw off Ten Thousand Dollars represented by the judgment I had obtained in New York. I regarded my services a loss. In New York I had resisted a number of claims against the company. One was for Eight Thousand Dollars. Another claim of about Thirty Thousand Dollars. I settled these claims for Five Hundred Dollars. Of course I had to do with a great many other matters. I was familiar with the stock sold by Mr. Baldwin belonging to the company. He sold some stock for fifteen cents and accounted for the whole fifteen cents to the corporation. This stock was about Forty-three Thousand shares. The first I ever knew of Mr. Baldwin buying treasury stock at 2½c a share was on Friday last.

After the receiver's deed to myself and Black I, personally spent, in protecting the title to this Sunset property, Twelve Thousand One Hundred and Forty-five Dollars. This does not include interest. I have never received direct-

ly or indirectly any payment from the Sunset Copper Mining Company, or on behalf of the Sunset Copper Mining Company, for any services rendered by me as attorney for the Company, and have never been recouped or repaid in any amount for any sums of money advanced by me to the Company for its use and benefit, nor for any that has been expended since the receiver's deed was made. No offer has ever been made to me on behalf of the complainant or any of the stockholders for any money expended for the protection of the claims at that time. The Sunset Copper Mining Company executed an obligation in the form of a mortgage, agreeing to repay to Judge Black and myself any money we expended in behalf of the Company.

Lloyd L. Black, a witness for defendants, after being sworn, testified as follows:

BY MR. MC MURCHIE:

I am an attorney at law. I have had sole charge of all matters pertaining to the application for patents for the Sunset. The application was made about the 1st day of February, 1912. I attended to all the work, legal and otherwise. I had to hunt up witnesses and look after adverse claims put in by the Homestead Copper Mine, and a claim of the Northern Pacific Railway Company and the State of Washington. I had to make an appeal to the Commissioner in the Land Office, and finally to make an appeal to the Secretary of the Interior and as a result of this appeal the Secretary of the Interior modified the ruling of the Commissioner of the Land Office and allowed a re-opening of the case. Afterwards, to comply with the new ruling of the department I was required to have an amended survey and furnish other evidence. The final decision of the Department has not yet been reached, and the ownership depends upon the decision of the Department. The Department has rejected the application in regard to all portions of the claims in Section 36, 35 and 2.

Thereupon the defendants introduced in evidence the Statute of Limitations of the State of Washington, as found in Remington & Ballinger's Code, as follows:

"Sec. 159. Within three years. * * *

4. An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud."

"Sec. 165.

An action for relief not hereinbefore provided for shall be commenced within two years after the cause of action shall have accrued."

"Sec. 464.

The superior court in which a judgment has been rendered * * * shall have power * * * to vacate or modify such judgment or order: * * *

4. For fraud practiced by the successful party in obtaining the judgment or order."

"Sec. 467.

The proceedings to obtain the benefit of subdivisions * * * 4 * * * of Sec. 464 shall be by petition verified by affidavit * * * and such proceedings must be commenced within one year after the judgment or order was made. * * *"

It was here stipulated between counsel for complainant and for defendants that if this action was decided in favor of the complainant that the Court might fix the value of the services of Lloyd L. Black for attending to the matters relating to obtaining a patent, it appearing to the Court that no payment had been made said Lloyd L. Black as patent attorney, and that the amount of said fee had not been agreed upon between said defendants and said Lloyd L. Black.

United States of America, Western District of Washington, ss.

I hereby certify that the foregoing statement contains, in a simple and condensed form, a true, complete and properly prepared statement of the oral testimony upon

which the final decree and the decree denying Petition for Re-hearing herein was based; and that it together with the following Exhibits and parts thereof, to-wit:

The following portions of complainant's Exhibit "B," to-wit: pp. 1-15 inclusive; p. 18; pp. 20-27 inclusive; p. 40; pp. 45-48 inclusive; pp. 54-58 inclusive; p. 61; p. 75; pp. 93-99 inclusive; pp. 101-104 inclusive and p. 116;

Also Complainant's Exhibits "P" and "Q";

Also the following portion of Defendants' Exhibit 7, to-wit: First and second paragraphs thereof with the date and address, and the notation "Ans. 2/7/04" found at end of letter.

Also Defendants' Exhibits 9, 13, 17, 21 and 28; also that part of Defendants' Exhibit 15 which is letter from McNutt to Buchler dated October 3, 1907;
constitutes all the evidence essential or necessary to a review and decision of said cause on appeal.

Dated this 22 day of December, A. D. 1914.

JEREMIAH NETERER,

Judge for the District Court of United States for the Western District of Washington, Northern Division.

Indorsed: Condensed Statement of Facts. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 22, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

[Excerpts from Plaintiff's Exhibit B]

In the Superior Court of the State of Washington, in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. .....

SUMMONS.

The State of Washington, To the said Sunset Copper Mining Company, a corporation, Defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid and answer the complaint of plaintiff and serve a copy of your answer upon the undersigned attorney for plaintiff, at his office below stated; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint which will be filed with the clerk of said Court, a copy of which is herewith served upon you.

JOHN SANDIDGE,

Attorney for Plaintiff.
Post Office Address, Everett,
Snohomish County, Wash.

Filed: Dec. 9, 1908

JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. .....

COMPLAINT.

Comes now the plaintiff above named, and for cause of action herein alleges as follows, to-wit:

First: That the Sunset Copper Mining Company, defendant above named, is a corporation duly organized and existing under and by virtue of the laws of the State of Washington;

Second: That the said defendant has property situated near Index, in the County of Snohomish, State of Washington, consisting of certain mining claims, thirty-six in number, and also owns the North half (N½) of Section One (1), Township Twenty-seven (27), Range Ten (10), E. W. M., in said County, and a tramway leading from said mining claims to the Town of Index, and a bridge across the Skykomish River at Index, all of which tramway and bridge is known as the Sunset bridge and tramway;

Third: That heretofore the said defendant made, executed and delivered to Ellen C. Baldwin the following described notes, to-wit:

One note, dated November 3, 1903, payable in one year, for $5000.00

One note, dated November 13, 1903, payable in one year, for 1000.00

One note, dated November 20, 1903, payable on demand, for 1000.00

One note, dated November 27, 1903, payable on demand, for 3000.00

One note, datedFebruary 8, 1904, payable on demand, for 5000.00

One note, dated February 8, 1904, payable on demand, for 5471.00

One note, dated August 3, 1904, payable on demand, for 4263.60

One note, dated September 17, 1904, payable on demand, for 4649.50

All bearing interest at the rate of six (6) per cent. per annum from date until paid, and that, to secure the payment of said notes two certain mortgages were executed by said defendant which are now of record in the office of the County Auditor of Snohomish County, Washington, one dated December 31, 1904, and one dated February 10, 1905, said mortgages conveying all real and chattel property of the defendant as security.

That afterwards and on July 10, 1907, the said Ellen C. Baldwin, for a good and valuable consideration, duly assigned and transferred said notes and mortgages to the said plaintiff, who is now the holder thereof; which notes are long past due and wholly unpaid; except the sum of $501.00 paid thereon November 25, 1907;

Fourth: That, under the laws of the State of Washington, and of the United States, it is necessary for the said defendant, in order to hold its said mining claims, to do annually at least One hundred ($100.00) dollars' worth

of work upon each of said claims, and it is necessary that there be expended upon said claims, during the year 1908 the sum of at least Thirty-six hundred ($3600.00) dollars, and that said defendant has no money or resources with which to do said work upon said mining claims, and that said defendant is insolvent and is unable to pay its obligations hereinbefore mentioned and other indebtedness owing by said company;

Fifth: That the total indebtedness of said company aggregates more than Forty-five thousand ($45,000.00) dollars, and that it has no means of paying said indebtedness; that the property hereinbefore described is unproductive and the company is unable to proceed with the development of said property, and that, if said work is not done upon said claims, that the said company will forfeit all right to said mining claims;

Sixth: That the said property of the said company is valuable and of such a nature as to justify the expenditure of the sum of Thirty-six hundred ($3600.00) dollars and more upon said property in its development and in doing the work necessary to be done in order to hold said claims. That property covered by said mortgages and owned by said company is more particularly described as follows, to-wit: Certain quartz mining claims, situate and being in the Index Mining District, in Snohomish County, State of Washington, commonly known as the Sunset group of mining claims, particularly described and known as follows:

Mountain Side No. 4, Ivy R. Mable, Lloyd B., Hazel C., Mountain Side No. 3, Sunset, Sunset Extension, Fourth of July Extension, Star, Star No. 2, W. H. B., Brown Bear, Boundary, Black Bear, Black Bear Extension, Copper King, Copper King Extension, Fourth of July, Miss Helen, Mountain Side, Mountain Side No. 2, Mono, Mono No. 2, River Side, Ravine, Ravine Extension, Success, Lebanon Extension, Lebanon, Glens Falls Extension, Glens Falls, Crown Point No. 3, Crown Point No. 2, Crown Point, Lost Art;

All of said mining claims being duly recorded in the mining Records of the office of the County Auditor of said Snohomish County, Washington;

Said defendant is also the owner of a saw mill erected upon said property, together with water power, flumes connected with said water power, compressor plant, electric light plant, drills, tools, supplies and other mill and mining appliances now situated on said property, together with water rights and other rights appurtenant thereto.

Wherefore, the plaintiff prays that a receiver be appointed for said property and that said receiver be authorized and directed to raise funds, borrow money, and to issue receiver's certificates therefor or otherwise to provide for the raising of money for the doing of the necessary work in order to hold said mining claims and to watch and care for said property, and that the receiver be authorized and directed to sell the whole or such portion of said property as may be necessary in order to pay the indebtedness of said company, and to do any and all other acts necessary or proper to be done in the premises in order to protect the interest of the creditors of said defendant and the stockholders in said company and for the payment of all debts and obligations of said company or of the receivership, and that plaintiff have such other and further relief as to the Court may seem just and proper in the premises, and for judgment against said company foreclosing said mortgages as provided by law and that the plaintiff be allowed to purchase the property covered by said mortgages.

JOHN SANDIDGE,

Attorney for Plaintiff.

State of New York, County of Warren, ss.

Frank L. Bell, being first duly sworn, deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint, knows the contents thereof and verily believes the same to be true.

FRANK L. BELL.

Subscribed in my presence and sworn to before me this 30th day of November, 1908.

Notary Public Seal. J. EDWARD SINGLETON,

Notary Public.

The above named defendant by H. C. McNutt, its president, does hereby acknowledge due and timely service of the foregoing summons and complaint.

Dated November 30, 1908.

H. C. McNUTT,

President of Sunset Copper Mining Company, a corporation.

Filed Dec. 9, 1908;

JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. 9510.

AFFIDAVIT.

State of New York, County of Warren, ss.

F. D. Morehouse being duly sworn says he is upwards of twenty-one years of age and resides at Glens Falls, in said Warren County; That on November 30th, 1908, between the hours of two and six o'clock in the afternoon of said day, he personally served the annexed summons and complaint, affidavit and notice upon the defendant the Sunset Copper Mining Company, by delivering to and leaving true copies of each of the same with Henry C. McNutt, at Glens Falls, in said Warren County.

That deponent personally knows the said Henry C. McNutt to be the president of the above named defendant and the corporation named in and to which said Summons and complaint, affidavit and notice is directed.

Deponent further says that he has no interest in nor against the above named defendant, and at the time when he served the above mentioned papers upon said defendant he was and still is competent to be a witness, either for or against said defendant.

F. D. MOREHOUSE.

Subscribed and sworn to before me this 30th day of November, 1908,

Notary Public Seal. J. EDWARD SINGLETON,

Notary Public.

Filed: Dec. 9, 1908. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. .....

NOTICE.

To the Sunset Copper Mining Company:

You are hereby notified that the above named plaintiff will, on the 9th day of December, A. D. 1908, at 9:30 o'clock, A. M., of said day, or as soon thereafter as counsel can be heard, apply to the Superior Court above named to have a Receiver appointed for the property of said defendant, for the reason that said defendant is insolvent and unable to pay its obligations and indebtedness and is unable to do the work necessary to be done upon its mining claims in Snohomish County, Washington, in order to hold and protect the same.

Notice is hereby given that at said time and place application will be made to have the Receiver authorized and directed to do said work upon said claims, costing approximately Thirty-six hundred ($3600.00) dollars and that said Receiver be authorized and directed to issue Receiver's certificates evidencing said indebtedness together with interest on the same, and that said Receiver be authorized to borrow money on such terms for such purpose as the Court may direct, and application will be made at said time and place for an order authorizing the said Receiver to proceed with such development work.

JOHN SANDIDGE,

Attorney for Plaintiff.

The above named defendant, by H. C. McNutt, its President, does hereby acknowledge due and timely service of the above Notice.

Dated this 30th day of December, A. D. 1908.

H. C. McNUTT,
President of Sunset Copper Mining Company, a corporation.

Filed Dec. 9th 1908. John R. Dally, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. .....

AFFIDAVIT.

State of New York, County of Warren, ss.

Frank L. Bell, being first duly sworn, deposes and says as follows:

That he is the plaintiff in the above entitled action, and is the owner and holder of two certain mortgages, of date December 31, 1904, and February 10, 1905, made, executed and delivered by the Sunset Copper Mining Company, a corporation duly organized and existing under and by virtue of the laws of the State of Washington, to one Ellen C. Baldwin and by her duly assigned and transferred to him for a good and valuable consideration, said mortgages being given to secure the payment of the following described notes, each of said notes bearing interest at the rate of six per cent. per annum from date until paid, to-wit:

One note, dated November 3, 1903, payable in one year, for	$5,000.00
One note, dated November 13, 1903, payable in one year for	1,000.00
One note, dated November 20, 1903, payable on demand, for	1,000.00
One note, dated November 27, 1903, payable on demand, for	3,000.00

One note, dated February 8, 1904, payable on demand, for 5,000.00

One note, dated February 8, 1904, payable on demand, for 5,471.00

One note, dated August 3, 1904, payable on demand, for 4,263.60

One note, dated September 17, 1904, payable on demand, for 4,649.50

That each and all of said notes are long past due and wholly unpaid; except the sum of $501.00 paid thereon November 25, 1907.

That said defendant above named owes other debts and obligations long past due, and the total indebtedness of said corporation at this time aggregates more than Forty-five thousand ($45,000.00); that said corporation is without means to procure the doing of work necessary to hold its mining claims under the laws of the State of Washington and of the United States, and will be forced to incur further indebtedness in order to procure the doing of such work; that the said corporation is at this time insolvent and unable to meet its obligations.

FRANK L. BELL.

Subscribed in my presence and sworn to before me this 30th day of November, A. D. 1908.

Notary Public Seal. J. EDWARD SINGLETON,
Notary Public.

The above named defendant by H. C. McNutt, its President, does hereby acknowledge due and timely service of the foregoing affidavit.

Dated November 30, 1908.

H. C. McNUTT,
President of Sunset Copper Mining Company, a corporation.

Filed: Dec. 9, 1908. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

ORDER APPOINTING RECEIVER.

This day this cause came on regularly for hearing upon the application of Frank L. Bell, plaintiff herein, for the appointment of a receiver for the defendant, Sunset Copper Mining Company, a corporation. And it appearing from the files and records herein that due and legal notice of this application, together with a true copy of the summons and complaint herein and of the affidavit used upon this hearing, have been duly served upon the defendant, the Sunset Copper Mining Company, and that no answer, demurrer or objections to this application have been filed or made;

And it further appearing to the satisfaction of the Court, from the evidence offered and heard upon this application, that the defendant, Sunset Copper Mining Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Washington; that on the 31st day of December, 1904, and on February 10, 1905, said defendant corporation duly executed and delivered to one Ellen C. Baldwin two certain mortgages and that said mortgages were by her duly assigned and transferred to the Plaintiff herein, together with the notes thereby secured; that said mortgages were given to secure the payment of eight promissory notes, aggregating the principal sum of $29,384.10, and that no part of said notes has ever been paid except the sum of $501.00; that all of said notes are now long past due and that said corporation is, in addition thereto, largely indebted to various other persons; that the property covered by said mortgages, and of which the defendant corporation is the owner, consists of certain quartz mining claims, situate

in the Index Mining District, in Snohomish County, Washington, commonly known as the Sunset group of mining claims, and described and known by the following names, to-wit, Mountain side No. 4, Ivy R., Mable, Lloyd B., Mountain side No. 3, Sunset, Sunset Extension, Fourth of July Extension, Star, Star No. 2, W. H. B., Brown Bear, Boundary, Black Bear, Black Bear Extension, Copper King, Copper King Extension, Fourth of July, Miss Helen, Mountain side, Mountain side No. 2, Mono, Mono No. 2, River side, Ravine, Ravine Extension, Success, Lebanon, Lebanon Extension, Glens Falls, Glens Falls Extension, Crown Point No. 3, Crow Point No. 2, Crown Point, Lost Art; that none of the assessment work for the year 1908 has been done upon said claims or any of them; that unless assessment work to the amount of $3600.00 shall be done upon said claims for the year 1908 defendants title thereto will be lost; that the defendant, Sunset Mining Company, a corporation, has no funds with which to perform said assessment work; that unless a receiver is appointed herein, with power to cause said assessment work to be done and to borrow funds for said purpose, said claims will be lost and plaintiff will be deprived of the security for the payment of his aforesaid notes; that John B. Fogarty is a fit and proper person to act as receiver for said defendant corporation;

Now therefore, it is hereby ordered, adjudged and decreed, that John B. Fogarty be, and he is hereby appointed Receiver of the defendant, Sunset Copper Mining Company, and it is further ordered that said receiver cause all necessary assessment work to be done upon the aforesaid mining claims and to take possession said mining claims and all other property of said defendant mining company and do all things necessary to preserve and protect said property from loss, and for said purpose he is hereby authorized to borrow such sums of money as may be necessary and issue therefor Receiver's certificates bearing interest at the rate of 6% per annum, which said certificates shall be a first lien upon all the property and assets of the defendant, Sunset Mining Company, a corporation.

It is further ordered that said Receiver shall before entering upon his duties as such take and subscribe the

oath required by law, and enter into bonds to the defendant its stockholders and creditors, in the sum of $1,000.00 with good and approved security, conditioned that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court herein.

Done in open Court this 10th day of December, 1908.

A. W. FRATER,

Presiding Judge.

Filed: Dec. 10, 1908. JOHN R. DALLY, County Clerk.

Know all men by these presents:

That we, John B. Fogarty, and American Bonding Company of Baltimore, a body corporate, duly incorporated under the laws of the State of Maryland and authorized to transact the business of surety in the State of Washington as surety, are held and firmly bound unto Sunset Copper Mining Company, its stockholders and creditors a their interest may appear in the full and just sum of One thousand ($1000.00) dollars, current money, to be paid to above parties or certain attorney; to which payment well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 10th day of December, in the year of our Lord One thousand nine hundred eight.

Whereas, by an order of the Honorable the Judge of the Superior Court for Snohomish Co., Washington, bearing date on the 10th day of December, 1908, and passed in a cause in the said Court, wherein Frank L. Bell, Complainant, and Sunset Copper Mining Company, Defendant, the above bounden John E. Forgarty, has been appointed Receiver.

Now the condition of the above obligation is such, that if the above bounden John B. Fogarty, does and shall, well and faithfully perform the trust reposed in him by said order or that may be reposed in him by any other order or decree in the premises, and obey the orders of the Court therein then the above obligation to be void, otherwise to remain in full force and virtue in law.

Witness, the hand and seal of the said John B. Fogarty and corporate name of the said American Bonding Company of Baltimore subscribed by its Vice-President, and the corporate seal of the said American Bonding Company of Baltimore, attested by the signature of its Assistant Secretary.

JOHN B. FOGARTY. (SEAL)

Signed, sealed and delivered in
the presence of S. J. Brooks.

(SEAL) AMERICAN BONDING COMPANY OF BALTIMORE,

By JOS. COLEMAN,
Vice-President.

Attest: FRED P. BUELL,
Assistant Secretary.

The above Bond is hereby approved this Dec. 10, 1908.

A. W. FRATER, Judge.

Filed: Dec. 10, 1908. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

OATH OF RECEIVER.

I, John B. Fogarty, the duly appointed Receiver of the Sunset Copper Mining Company, do swear that I will faithfully perform the duties of said trust to the best of my ability.

JOHN B. FOGARTY.

Subscribed and sworn to before me this 11th day of December, 1908.

JOHN SANDIDGE,

Court Commissioner for Snohomish County, Washington.

Filed: Dec. 11, 1908. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. .....

APPEARANCE AND STIPULATION.

I, D. W. Locke, do hereby enter my appearance as attorney for the above named defendant, having been duly authorized to appear as such attorney, and hereby consent that the above case may be tried on January 30, 1909, at 10 o'clock A. M. of said day, or as soon thereafter as same may be reached.

D. W. LOCKE,
Attorney for Defendant.

It is hereby stipulated by and between the said plaintiff and the said defendant that the above entitled action may be tried before F. E. Anderson as Judge pro tem, and that said case may be tried before F. E. Anderson as Judge pro tem on the 30th day of January, 1909, at the county court house in Everett, Washington, at ten o'clock A. M. of said day or as soon thereafter as same can be reached.

JOHN SANDIDGE,
Attorney for Plaintiff.

D. W. LOCKE,
Attorney for Defendant.

The foregoing stipulation that F. E. Anderson shall try the above cause as Judge pro tem, is hereby approved.

W. W. BLACK, Judge.

Filed: Jan. 30, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE.

This day this cause came on regularly for trial before the Hon. F. E. Anderson, judge pro tempore, the plaintiff and defendant by their attorneys of record, having stipulated in writing for the trial hereof at this time before said judge pro tempore, and said stipulation having been approved by the judge of the Superior Court and filed herein, the plaintiff appearing by his attorney, John Sandidge, Esq., and the defendant appearing by its attorney, D. W. Locke, Esq., and John B. Fogarty, Temporary Receiver herein, being present in person; and the court having heard all the evidence adduced or offered upon the trial and being in all things fully advised in the premises, makes the following findings of fact and conclusions of law, and decree herein, to-wit:

Findings of Fact.

The Court finds that all the allegations contained in plaintiffs complaint are true.

Conclusions of Law.

That the plaintiff is entitled to all the relief prayed for in his complaint.

Decree.

Now, therefore, it is hereby ordered, adjudged and decreed that the plaintiff, Frank L. Bell, recover of the defendant, Sunset Copper Mining Company, the sum of Thirty-seven thousand five hundred and one & 75/100 ($37,501.75) dollars, together with interest thereon at the rate of 6% per annum from this day until paid, and his costs herein expended and all disbursements by him made, including an attorneys fee in the sum of $.....
That the plaintiff have a lien, by reason of the mortgages sued upon in his complaint upon the following described property to secure the payment of his said judgment, interest and costs, to-wit, upon those certain quartz mining claims, situate in the Index Mining District in Snohomish County, Washington, and known as: Mountain Side No. 4; Ivy R., Mable; Lloyd B.; Hazel C.; Mountain Side No. 3; Sunset; Sunset Extension; Fourth of July Extension; Star; Star No. 2; W. H. B.; Brown Bear; Boundary; Black Bear; Black Bear Extension; Copper King; Copper King Extension; Miss Helen; Mountain Side; Mountain Side No. 2, Mono; Mono No. 2; River Side; Ravine, Ravine Extension; Success; Labanon; Labanon Extension; Glens Falls; Glens Falls Extension; Crown Point; Crown Point No. 2; Crown Point No. 3; Lost Art, being thirty-six claims. Also that certain Saw Mill erected upon said premises together with water power, flumes connected with said water power, compressor plant, electric light plant, drills, tools, supplies and all other mill and mining machinery and appliances now situated upon said mining claims and premises, with all water rights and other rights and appurtenances thereto. Also all the interest of the defendant in and to the North Half of Section 1, Township 27, N. Range 10 East W. M.; that said lien be and the same is hereby foreclosed and said property sold as hereinafter directed to satisfy plaintiffs said judgment, interest, costs and disbursements.

It is further ordered, adjudged and decreed, that the defendant, Sunset Copper Mining Company, a corporation, is insolvent and that it is necessary that a permanent receiver be appointed for said defendant corporation to preserve its property that John B. Fogarty be and he is hereby appointed receiver of said defendant corporation upon taking the oath required by law and executing bonds,

with good and approved security in the sum of $1000.00; that said receiver be and he is hereby invested with all the powers and duties heretofore given the temporary receiver herein by the orders of this Court and such further powers as the court may hereafter order.

It is further ordered, adjudged and decreed, that the bond heretofore given herein by the said John B. Fogarty, as temporary receiver may be continued and remain in force as his bond, above required as permanent receiver.

It is further ordered, adjudged and decreed, that plaintiff is entitled to have all of the above described property and all the rights and appurtenances thereunto belonging and all other property belonging to said defendant, Sunset Copper Mining Company, a corporation, or a sufficiency thereof to pay his said judgment, interest and costs, sold to satisfy same.

Done in open Court this 30th day of January, 1909.

F. E. ANDERSON,
Judge Pro Tempore.

Filed: Jan. 30, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. .....

OATH OF RECEIVER.

State of Washington, County of Snohomish, ss.

I, John B. Fogarty, do solemnly swear that I will support the constitution of the United States and the constitution and laws of the state of Washington, and that I will perform my duties as receiver of Sunset Copper Mining Co., a corporation, to the best of my ability, so help me God.

JOHN B. FOGARTY.

Subscribed and sworn to before me this 1st day of February, 1909.

F. E. ANDERSON,

Notary Public in and for the State of Washington, residing at Everett.

Filed: Feb. 2, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

State of Washington, County of Snohomish, ss.

I, G. A. Church, being first duly sworn on oath depose and say: That I am the head clerk of the Everett Weekly Herald, a weekly newspaper printed and published in the City of Everett, County of Snohomish, and State of Washing; that said newspaper is a newspaper of general circulation in said county and state, and that the notice to creditors of Sunset Copper Mining Company in Bell vs. Sunset Copper Mining Co., No. ..... a printed copy of which is hereunto attached, was published in said newspaper and not in supplement form, in the regular and entire edition of said paper once each week for a period of four consecutive weeks, beginning on the 26th day of December, 1908, and ending on the 16th day of January, 1909, both dates inclusive and that said newspaper was regularly distributed to its subscribers during all of said period.

G. A. CHURCH.

Subscribed and sworn to before me this 2d day of February, 1909.

J. B. BEST,

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

(SEAL)

Publisher's Fees $.....

"Notice to Creditors of Sunset Copper Mining Company, a corporation.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

You, and each of you are hereby notified to present to John B. Fogarty, receiver of the defendant corporation, whose postoffice address is Walsh Block, Everett, Snohomish County, Washington, or to the clerk of the Superior Court of the State of Washington, in and for the county of Snohomish, a verified statement of any claim or claims which you may have against said defendant, Sunset Copper Mining Company, a corporation, on or before the first day of February, 1909, and in case of your failure so to do, any claim which you may have will be deemed barred and not entitled to any participation in the proceeds of the receivership of said defendant corporation.

You and each of you are further notified that the said receiver is required to report and file with the clerk of said court all claims against said defendant Sunset Copper Mining Company, a corporation, filed with the receiver, on or before the 3d day of February, 1909, and any person desiring to object to any of the claims so filed are required to file their objections in writing with the clerk of said court on or before the 10th day of February, 1909, which said date has been fixed as the time for hearing of such objections, this December 10, 1908.

JOHN B. FOGARTY, Receiver.

Date of first publication, Dec. 26, 1908."
Filed: Feb. 3, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. 9510.

REPORT.

The undersigned, the duly appointed, qualified and acting receiver of Sunset Copper Mining Co., a corporation, the above named defendant, pursuant to an order of this court made and entered herein on the 10th day of December, 1908, respectfully shows that before the 1st day of February, 1909, the following claims against said defendant have been filed with the receiver or with the clerk of the court in the above entitled action, to-wit:

I.

Claim of W. W. Black on account of salary, judgment and money advanced to said defendant amounting in all to the sum of ten thousand nine hundred twenty-three and 21/100 dollars ($10,923.21), as appears in detail from the claim of said W. W. Black, hereto attached.

II.

Claim of Henry C. McNutt on account of office rent, rent on typewriter, furniture, stamps, etc., advertising, salary, etc., amounting to thirteen hundred seven and 95/100 dollars ($1307.95), as appears in detail upon the claim of Henry C. McNutt, hereto attached.

III.

Claim of Frank L. Bell, same being as exemplified copy of certain court records in the circuit court of the United States for the Northern District of New York, showing a judgment in favor of the said Frank L. Bell, for the amount of twelve thousand seven hundred sixty-seven and 57/100 dollars ($12,767.57), and that the exemplified copy of said judgment is hereto attached and hereby referred to and made a part of this report.

IV.

Judgment in favor of Frank L. Bell against said defendant in the sum of thirty-seven thousand five hundred one and 75/100 dollars ($37,501.75), with interest at six per cent. (6%) per annum from the 30th day of January, 1909, together with the costs and disbursements of said action, and that said judgment was rendered in the above entitled court and is now on file in the office of the clerk of said court.

V.

Bill of H. L. Bartlett of Index, Washington, amounting to twelve and 80/100 dollars ($12.80) on account of merchandise sold said defendant in the month of December, 1908.

VI.

Said receiver further shows that on the 2d day of February, 1909, H. W. Holmes filed his verified claim with the said Receiver, claiming that the said defendant is indebted to the said H. W. Holmes in the sum of fourteen hundred eighty-eight and 69/100 dollars ($1488.69), and that said claim is hereto attached hereby referred to and made a part of this report.

Respectfully submitted,

JOHN B. FOGARTY, Receiver.

State of Washington, County of Snohomish, ss.

John B. Fogarty being first duly sworn on oath deposes and says that he is the Receiver named in the foregoing report; that he has read the same, knows the contents thereof and that the same is true and correct.

JOHN B. FOGARTY.

Subscribed and sworn to before me this 2d day of February, 1909.

G. W. ADAMSON,

Notary Public in and for the State of Washington, residing at Everett.

Filed: Feb. 3 ,1909. JOHN R. DALLY, County, Clerk.

State of Washington, County of Snohomish, ss.

W. W. Black, of lawful age, being first duly sworn, deposes and says that the Sunset Copper Mining Company is indebted to him in the following sums, to wit:
On account of salary as General Manager from

July 20th, 1903, to October 1st, 1906, at the rate of $100.00 per month		$ 3,833.33
On account of salary as General Manager from September 1st, 1907, to November 15th, 1908, at rate of $100.00 per month		1,350.00
On account of Judgment in the case of W. W. Black vs. Sunset Copper Mining Company No. 8500, records of Snohomish County, dated June 26, 1907,	$1,324.22	
and interest on same	125.83	1,450.05

On account of money advanced December 26, 1906, secured by note and mortgage on all the property of said company, which mortgage is recorded in the Auditor's office, Snohomish County, Washington, in Volume 62 of Mortgages, page 357 et seq., $1,500.00 and interest on same at six per cent.	187.50	1,687.50
On account of money advanced to said Company during the year 1908, in payment of work, labor, supplies and expenses of said Company in connection with the doing of assessment work on the property of said Company		2,602.33
making a total of		$10,923.21

Affiant deposes and says that all of said sums are justly due, owing and unpaid after deducting all just credits and offsets, and that said Company is now indebted to him in the full sum of $10,923.21.

W. W. BLACK.

Subscribed in my presence and sworn to before me this 29th day of January, A. D. 1909.

O. C. GASTON,

Notary Public in and for the State of Washington, residing at Everett, Snohomish County, said State.

(SEAL)

Jan. 30th.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. 9510.

REPORT AND PETITION.

To the Honorable, the above entitled court:

The undersigned petitioner respectfully shows:

I.

That he is the duly appointed, qualified and acting receiver of Sunset Copper Mining Co., a corporation.

II.

That on the 10th day of February, 1909, one Nicholas Rudebeck, claiming to be a stockholder in said Sunset Copper Mining Co., made written demand upon said receiver on behalf of himself and all other stockholders similarly situated, that the undersigned as receiver of said Sunset Copper Mining Co., forthwith commence an action against Mrs. Ellen C. Baldwin to collect the balance due on the stock which she holds in said Sunset Copper Mining Co., which was issued to W. H. Baldwin and assigned by W. H. Baldwin to Ellen C. Baldwin as cestui que trust without any consideration prior to the death of said W. H. Baldwin. Said demand also states that there is a balance due of ninety-seven and one-half cents (97½c) per share upon two hundred fifty thousand (250,000) shares of stock in said company from the said Ellen C. Baldwin, and that a copy of said demand is hereto attached, marked Exhibit "A," hereby referred to and expressly made a part of this report and petition.

III.

That said receiver has no knowledge whatever regarding the liability of the said Ellen C. Baldwin as set forth in said demand, and that said receiver does not know and has no means of ascertaining whether a judgment obtained against said Ellen C. Baldwin could be collected.

IV.

That no money whatever has come into the possession of said petitioner as such receiver and that said receiver has no funds to defray the expense of any litigation, and that said receiver is informed and believes, and therefore alleges the fact to be, that the said Ellen C. Baldwin is a non-resident of the State of Washington and is a resident of the State of New York.

V.

Said receiver is ready and anxious to take any steps the Court may deem necessary to protect the rights of all creditors and stockholders of said Sunset Copper Mining Co.

VI.

That in order that the court and said receiver may be fully advised in the premises said receiver alleges that it is necessary for the court to make an order requiring said Nicholas Rudebeck to appear before the said court at a time and place to be by the said court designated, then and there to disclose any and all facts tending to show any liability on the part of the said Ellen C. Baldwin to said Company or to any other person that the court may direct said receiver to take what steps may be necessary to protect the interest of all persons concerned.

Wherefore said petitioner prays that the court will make an order directing said Nicholas Rudebeck to appear

before the court on a day certain, then and there to give what information may be in his possession regarding the liability of the said Ellen C. Baldwin, or any other person to said company upon the hearing.

JOHN B. FOGARTY, Receiver.

State of Washington, County of Snohomish, ss.
John B. Fogarty being first duly sworn on oath deposes and says: That he is the receiver named in the above and foregoing report and petition; that he has read the same, knows the contents thereof and believes the same to be true.

JOHN B. FOGARTY.

Subscribed and sworn to before me this 15th day of February, 1909.

JOS. COLEMAN,

Notary Public in and for the State of Washington, residing at Everett.

Exhibit "A."

Everett, Washington,

Feb. 10, 1909.

To John B. Fogarty, Esq.,

As receiver of the Sunset Copper Mining Company, a corporation.

Dear Sir:

I, Nicholas Rudebeck, as a stockholder of said Sunset Copper Mining Company, and in behalf of myself and all other stockholders similarly situated, demand that you as such receiver forthwith commence an action against Mrs. Ellen C. Baldwin to collect the balance due on the stock

which she holds in said Sunset Copper Mining Company, which was issued to W. H. Baldwin, and assigned by W. H. Baldwin to Ellen C. Baldwin, as his wife and sectu que tus (cestui que trust), without any consideration, prior to the death of said W. H. Baldwin, said stock being issued to said W. H. Baldwin on or about the ..... day of June, 1903, and upon which there is a balance due the company of 97½ cents per share. The number of shares as aforesaid and upon which there is remaining unpaid the Company 97½ cents per share is 250,000 shares of the par value of $1.00 each.

I hereby demand that you as receiver of said company commence an action against said Ellen C. Baldwin on her stock as aforesaid to recover the amount of $62,000.00, or sufficient to pay all the indebtedness now outstanding against the property of said mining company and against said mining company.

Very truly yours,

NICHOLAS RUDEBECK.

Filed: Feb. 15, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

ORDER OF SALE.

This day this cause come on for hearing upon the petition of John B. Fogarty, receiver of the defendant Sunset Copper Mining Company, for an order directing and permitting said receiver to sell the property of said defendant, for the purpose of paying the claims against said defendant. And it appearing to the satisfaction of the court, from the records and files herein and the proofs offered and heard at this time, that the claims heretofore adjudged valid and subsisting demands against said defendant aggregate the sum of $64,001.97; that the receiver certificates outstanding and the costs and probable costs of the receivership aggregate the further sum of $3,200.00; that the defendant has no funds whatever with which to pay said claims or any means by which it can raise the money to do so; that the only property of the defendant consists of quartz mining claims, mining machinery, sawmill and appurtenances, etc., all of which is more fully described hereinafter; that said mining claims have not as yet been developed to a point where they can be operated as a mine; that it will be unprofitable to operate said mining claims without the investment of a large sum for development purposes; that defendant has no funds with which to develop said claims nor any money with which to do the necessary assessment work in order to hold its right and title to said claims and that same will be lost to the defendant unless they are sold; that the personal property of defendant and other property hereinafter described is chiefly valuable to be used in connection with said mining claims and that it is to the best interest of the defendants, its stockholders and creditors that all of said property be sold in one parcel, and it

appearing that it is necessary to sell all of said property for the purpose of paying the liabilities of the said defendant, Sunset Copper Mining Company;

Now, therefore, it is ordered, adjudged and decreed, that John B. Fogarty, receiver of the defendant, proceed to sell, at public auction to the highest and best bidder, for cash 20% of the price offered to accompany the bid the balance to be paid upon confirmation, all of the property of the said defendant, particularly described as follows: Thirty-six quartz mining claims situate in the Index mining District, in Snohomish County, Washington, and known as the Mountain Side, Mountain Side No. 2., Mountain Side No. 3, Mountain Side No. 4., Ivy R., Mable., Lloyd B,. Sunset., Sunset Extension., Fourth of July., Fourth of July Extension., Star., Star No. 2., W. H. B., Brown Bear, Boundary, Black Bear, Black Bear Extension, Copper King, Copper King Extension, Miss Helen, Mono, Mono No. 2, River Side, Ravine, Ravine Extension, Success, Lebanon, Lebanon Extension, Glens Falls, Glens Falls Extension, Crown Point, Crown Point No. 2, Crown Point No. 3, and Lost Art. Also the north half of Section One (1) Township Twenty-seven (27) North, Range Ten (10) East W. M. Also a tramway leading from said mining claims to the town of Index and a bridge across the Skykomish river, said tramway and bridge being known as the Sunset bridge and tramway; also a saw mill erected upon said mining claims; also the compressor plant, water power, flumes, electric light plant, drills, tools, supplies, water and riparian rights, and all other mining machinery, appliances and appurtenances situate upon and about the said mining claims and property to which said defendant has title, and all the right, title and interest of the said defendant in and to said property, and all other property of defendant situated in Snohomish County, Wash.

Said sale will be held at the west front door of the Snohomish County Court House, in the City of Everett, and before making same the receiver will cause a notice thereof to be published in the Everett Daily Herald once a week for four consecutive weeks before said sale, and posting a notice thereof in three of the most public places in Snohomish County, Wash., four weeks before said sale.

Said notice will give the time, terms and place of sale, and will contain a description of the property to be sold as hereinabove described.

It is further ordered, adjudged and decreed, that said receiver shall accept from the purchaser at said sale, at their face value, as part payment upon the purchase price of said property, any receivers receipts issued by the receiver herein and held by the purchasers also any claims which have been adjudicated as valid claims against said defendant and which may be legally held or duly assigned to the purchaser; provided however that the receiver shall first require from the purchaser a payment of $2,000.00 in cash; and provided further that no claim shall be received until the purchaser has paid in cash a sum sufficient to equal the amount of outstanding receivers receipts and the amount of any claims which have been adjudged to be preferred and prior to the claim so presented.

Said receiver will report his acts hereunder to this court.

Done in open court this 15th day of Feb. 1909.

LESTER STILL,

Presiding Judge.

Filed: Feb. 15, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

ORDER FIXING PRIORITIES OF CLAIMS.

This day this cause coming on regularly for hearing upon the application of John B. Fogarty, receiver of the defendant, Sunset Copper Mining Company, for an order fixing and adjudging the priorities of the claims against said defendant; and it appearing that all the claimants against said defendant or their attorneys, have been duly served with a copy of the order fixing the time for hearing this application, and the court having heard said motion and being in all things fully advised;

Now, therefore, it is hereby ordered, adjudged and decreed, that all the claims heretofore filed with the said receiver, and reported and filed herein, are just claims against said defendant, Sunset Copper Mining Company, and are entitled to the following order, to-wit:

First: The costs and disbursements of the receivership and the Receivers Certificates issued by the receiver under the orders of the court.

Second: That portion of the claim of W. W. Black on account of moneys advanced during the year 1908, being for the sum of Two thousand six hundred and two ($2,602.33) dollars and thirty-three cents.

Third: That portion of the claim of W. W. Black on account of note and mortgage for money advanced Dec. 26, 1906, for the sum of $1,687.50.

Fourth: The judgment of the plaintiff Frank L. Bell, rendered herein for the sum of $37,501.75 and that portion of the claim of W. W. Black on account of judgment in the cause of W. W. Black vs. Sunset Copper Mining Company, cause No. 8500 of the docket of this court, for the sum of $1,450.05.

Fifth: All the rest and residue of the claims filed with the Receiver shall be equal and entitled to participate in the distribution of the assets of the defendant upon an equal footing.

Done in open Court this 15th day of Feb., 1909.

LESTER STILL,
Presiding Judge.

Filed Feb. 15, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. 9510.

ORDER.

This matter coming on regularly to be heard in open Court on the 19th day of February, 1909, upon the report, and petition of the receiver of the above named defendant for an order of the Court directing said receiver to take such action as the court might deem just and proper regarding the demand of Nicholas Rudebeck that said receiver institute an action against Ellen C. Baldwin for the purpose of recovering certain moneys alleged by the said Nicholas Rudebeck to be due and owing by the said Ellen C. Baldwin to the said defendant, and at the hearing upon said application the plaintiff in the above entitled action appearing by his attorney, John Sandidge, and the defendant appearing by its attorneys, Locke & Woodward, and the said Nicholas Rudebeck appearing in person and by his attorneys, Hathaway & Alston, and the receiver appearing in person, and after hearing all the testimony and after duly considering the same, together with the suggestions of the attorneys for the respective parties, it appearing to the Court that the proper order to make at this time is to direct said receiver to investigate said alleged claim and after so doing to report to the Court the result of said investigation.

It is therefore ordered, adjudged and decreed that said receiver be and he hereby is directed as soon as possible to investigate said claim and report the result of such investigation to the court.

Done in open Court this 20th day of February, 1909.

LESTER STILL, Judge.

Filed: Feb. 20, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. 9510.

REPORT.

The undersigned receiver of Sunset Copper Mining Co., a corporation, respectfully shows to the court:

I.

That acting under the instructions of the court said receiver has investigated the demand by Nicholas Rudebeck that said receiver institute an action against Mrs. Ellen C. Baldwin.

II.

That said receiver has investigated the alleged claim of the Sunset Copper Mining Co. and the stockholders thereof against the said Ellen C. Baldwin and that from all the facts said receiver has been able to ascertain neither the Sunset Copper Mining Co. nor any stockholder or stockholders thereof have any cause of action against the said Ellen C. Baldwin.

Respectfully submitted,

JOHN B. FOGARTY, Receiver.

State of Washington, County of Snohomish, ss.

John B. Fogarty being first duly sworn on oath deposes and says: That he is the receiver named in the foregoing report; that he has read the same, knows the contents thereof and that the same is true and correct.

JOHN B. FOGARTY.

Subscribed and sworn to before me this 16th day of March, 1909.

JOS. COLEMAN,

Notary Public in and for the State of Washington, residing at Everett.

Filed: Mar. 17, 1909. JOHN R. DALLY, County Clerk.

FRANK L. BELL.

Attorney and Counselor at Law,

Glens Falls, N. Y. November 16th, 1908.

To the Stockholders of Sunset Copper Mining Company, of Everett, Washington.

Gentlemen:

The assessment work necessary to hold the claims of this company has not been done for the present year. This work required the expenditure of $3,600, upon which I have advanced $800.

The Company holds thirty-six claims and there is valuable standing timber upon them. Reports of expert place the value of this timber at $40,000. I have been upon the property and know it is well timbered, but feel the above figures are too high. Personally I believe this timber to be worth fully $25,000.

To hold this timber it is necessary to obtain patents from the government on these claims. Judge Black advises me it will cost about $10,000 to secure these patents and at that the assessment work for this year must be done. This means raising $13,600.

W. H. Baldwin died in April, 1905, and left his widow without any property, except her home in this city and her interest in the Sunset property. Mr. Baldwin's executor advises me the estate will not pay the debts. In other words Mr. Baldwin died insolvent.

Mrs. Baldwin requested me to assist her with this property and July 11, 1907, assigned to me $1,250,328 shares of stock in the company, and debts which, with interest, now amount to about $40,000; fully $35,000 of which is secured by mortgage on the company's property. The company owes me about $12,000 additional; it owes Judge Black about $5,000 and the W. H. Baldwin estate a claim of about $8,000, which I believe should be reduced to say $5,000. This makes the present indebtedness about $62,000, and there is some money due the officers for services.

The total stock issued by the company is about 2,300,000 shares, which shows my holdings to be a little over one-half of the total issue.

Judge Black and myself are willing to let our claims rest, and join other stockholders in trying to do something with the property. We feel justified in saying we can arrange to have all claims against the company held. Times and conditions have been such during the past year and one-half that it has been impossible to do anything with a copper property. Nevertheless Judge Black and myself have tried hard to do something with this property.

As I am in no way responsible for the the condition of the company I do not feel called upon to make further advances to it. If the other stockholders are willing to do their part, I am ready to do mine, based upon my stock holdings. I believe it unbusinesslike not to patent the claims and hold the timber; if anything is warranted it is the holding of this timber and unless this can be done I do not care to go on, but prefer to let the company go where it will.

To do the assessment work and patent the claims we need $13,600. Incidentals will be something and we should make the amount $15,000. Upon the basis of 2,300,000 shares issued each share of stock must contribute 6 52-100ths mills, or 65 and 2-10th cents per 100 shares, which calls from me an advance of $8,152.14, and holders of the balance of the stock $6,843.86, making a total of $14,996.

I am ready to advance my proportion, as above, if all the other stockholders will do likewise. If the assessment work is done before January 1st, next, the money must be paid at once. If you will join in this send me certified check, to the order of the company, for your proportion on a basis of 6 and 52-100ths mills for each share of stock held by you. If your check is accepted the company will send you its demand note, with interest at 6%, for the amount of your check.

Unless stockholders holding a substantial amount of the stock not held by me send in their checks I shall not go on with the work, but shall let the company work itself out as it may, which I assume means a receivership and sale of the property.

If checks are not accepted they will be returned to the sender.

Parties have already threatened a receivership and if this is done we can get the receiver discharged, provided the above plan is accepted by sufficient number.

I have given you all of the facts as I understand them, and can neither add to nor explain further. There are about 1,500 stockholders and you can appreciate that this circular letter is all I can send to them. Awaiting your decision, I am

Very truly yours,

FRANK L. BELL.

Filed: Mar. 20, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. 9510.

RETURN OF RECEIVER TO ORDER OF SALE.

The undersigned receiver of Sunset Copper Mining Co., a corporation, the above named defendant, respectfully shows to the court:

I.

That on the 15th day of February, 1909, the above entitled court made an order directing said receiver to sell at public sale to the highest and best bidder, upon the terms stated in said order of sale, certain property belonging to Sunset Copper Mining Co., a corporation, the above named defendant. Reference is hereby made to said order for a more complete description of said property.

II.

That pursuant to said order said receiver gave due and legal notice as required by law and the order of the court at the time and place where said sale would be made.

III.

That on the 20th day of March, 1909, at 10:30 o'clock A. M. at the west front door of the court house in Snohomish County, Washington, said receiver offered for sale all of said property as directed by the order aforesaid.

IV.

That at said sale W. W. Black and Frank L. Bell were the only bidders for said property, and that said receiver sold the same, subject to confirmation by the court, to the said W. W. Black and Frank L. Bell for the sum of Forty thousand dollars ($40,000.00).

V.

Said receiver further shows that said purchasers paid in cash the sum of Two thousand dollars ($2,000.00) as required by said order and tendered in payment of the remaining twenty per cent (20%) of the purchase price outstanding receiver's receipts and duly adjudicated claims against said defendant for the sum of six thousand dollars ($6,000.00).

VI.

Said receiver further shows that said sale was legally made and fairly conducted and that the price offered by said purchasers, to wit, the sum of Forty thousand dollars ($40,000.) was the only offer tendered to said receiver for said property. Said property is described as follows, to wit: Thirty-six (36) quartz mining claims situated in the Index Mining District, in Snohomish County, Washington, and known as the Mountain Side No. 2; Mountain Side No. 3; Mountain Side No. 4; Ivy R., Mable; Lloyd B.; Sunset; Sunset Extension; Fourth of July; Fourth of July Extension; Star; Star No. 2; W. H. B.; Brown Bear; Black Bear; Black Bear Extension; Copper King; Copper King Extension; Miss Helen; Mono; Mono No. 2; River Side; Ravine; Ravine Extension; Success; Lebanon; Lebanon Extension; Glens Falls; Glens Falls Extension; Crown Point; Crown Point No. 2; Crown Point No. 3; and Lost Art. Also the north half of Section one (1) Township Twenty-seven (27) North, Range Ten (10) East, W. M. Also a tramway leading from said mining claims to the town of

Index and a bridge across the Skykomish River, said tramway and bridge being known as the Sunset bridge and tramway, also a sawmill erected upon said mining claims; also the compressor plant, water power, flumes, electric light plant, drills, tools, supplies, water and riparian rights, and all other mining machinery, appliances and appurtenances situate upon and about said mining claims and property to which said defendant has title, and all right, title and interest of the said defendant in and to said property, and all other property of defendant situated in Snohomish County, Washington.

Wherefore said receiver prays that the court will fix a time for hearing upon this return of sale and that at such hearing the court will make an order confirming said sale and directing the execution of conveyance to the purchaser.

Respectfully submitted,

JOHN B. FOGARTY, Receiver.

State of Washington, County of Snohomish, ss.

John B. Fogarty being first duly sworn on oath deposes and says: That he is the receiver named in the within and foregoing return of receiver to order of sale; that he has read the same, knows the contents thereof and that he believes the same to be true.

JOHN B. FOGARTY.

Subscribed and sworn to before me this 22nd day of March, 1909.

JOS. COLEMAN,

Notary Public in and for the State of Washington, residing at Everett.

Filed Mar. 22, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. .....

OBJECTIONS TO CONFIRMATION OF SALE.

Comes now Nicholas Rudebeck for himself and in behalf of all other stockholders of the above named defendant Company similarly situated, and object and protest against the confirmation or approval by this court of the sale made of certain property belonging to said defendant corporation, which sale was made on the 20th day of March, 1909.

This protest and objection is made for the reasons and upon the grounds set forth in the affidavit of this affiant made and filed herein in support of his motion heretofore made for a postponement of said sale and for an order requiring the return of the books of the said defendant corporation to this state, and is likewise based upon all the records, papers and proceedings on file or of record in this cause, and for the further reason that the amount for which the property was sold was grossly inadequate.

NICHOLAS RUDEBECK.

Service admitted March 29th, 1909.

JOHN B. FOGARTY, Receiver.

Filed Mar. 29, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. 9510.

OBJECTIONS TO CONFIRMATION OF SALE.

Now comes L. T. Reid, owner of Fifteen thousand shares of the capital stock in the defendant corporation, through and by his attorney Schuyler Duryee, of Everett, Washington, and for himself and on behalf of other stockholders in the defendant corporation, object to and protests against the approval and confirmation by this court of the purported sale on the 20th day of March, 1909, of property belonging to defendant corporation to W. W. Black and Frank L. Bell.

This objection and protest are founded in part upon the matter set forth in the affidavit of one Nicholas Rudebeck made and filed herein as a basis for said Rudebeck's motion for postponement of sale, and for production of all books, records, papers, accounts and documents of said defendant corporation.

For further good and sufficient reasons for objection to and protesting against the confirmation of the sale aforenamed, it is hereby alleged:

1. That the proceedings herein and the records of the defendant corporation show that its affairs have been grossly mismanaged. The trustees certified that the increased capital stock to $2,000,000 was fully paid, whereas it was not; they filed amended articles of incorporation increasing the number of trustees from three to five, without notice to the stockholders and without their knowledge or assent; they voted the treasury stock amounting to

794,000 shares for their re-election; they sold or agreed to sell 200,000 shares for their re-election; they sold or agreed to sell 200,000 shares of the proposed increase of capital to $3,000,000 at 2½ cents a share before the increase was authorized; they adopted a resolution exculpating themselves from any obligation or liability whatever by reason of their having sold any of the stock of the company below par. And in all of these transactions W. W. Black was a prime factor.

II. That the minority stockholders in and of said defendant corporation have not had their day in court for they have been practically abandoned without notice by the officers and trustees of said defendant corporation, by the failure and refusal of said officers and trustees to protect or attempt to protect the interests of said defendant corporation and of the minority stockholders therein and thereof.

III. That the only official of said defendant corporation in the State of Washington during the few years past, as your protestant is advised, was and is W. W. Black, resident trustee.

IV. That in, during, and under the present cause of action the said Black has not, so far as disclosed by the records and proceedings herein, made any effort or attempt to save and protect the defendant corporation from unlawful and unjust claims.

V. That Frank L. Bell was elected trustee, qualified as such, and acted as such in the defendant corporation according to the records thereof, notwithstanding said Bell's affidavit to the contrary made and filed herein on the 20th day of March, 1909. The records also show that said Bell was and is a stockholder in said defendant corporation irrespective of the stock assigned to him by Ellen C. Baldwin, notwithstanding his affidavit to the contrary made and filed herein.

VI. That the record of proceedings of the defendant corporation show that the trustees refused to ratify and confirm the acts of the president and secretary of defendant corporation in issuing notes to the amount of Ten

thousand dollars to Ellen C. Baldwin in November, 1903. And the records also disclose that the note for $4,263.60 dated August 3, 1904, and possibly the note for $4,649.50 dated September 17th, 1904, are illegal and invalid.

VII. That if the notes amounting to nearly $30,000 alleged to have been issued by the defendant corporation to one Ellen C. Baldwin be valid obligations of the defendant then the said defendant has a legal and valid defense thereto, in that the said Baldwin is indebted to the defendant corporation to the amount of her unpaid stock which is more than sufficient to liquidate any and every claim that she or her assignee Frank L. Bell may have or can have against the defendant corporation. The courts have held that where an insolvent corporation in the hands of a receiver is indebted to a stockholder, and the stockholder is also insolvent, the court will not allow such stockholder to participate in the distribution of the assets, but will offset his interest in the assets against his statuory liability on his stock, even though the stockholder has assigned to another his interest in the assets.

VIII. The court decreed that notice to the creditors of said defendant corporation be given by publishing a notice substantially as set out in the order of the court. And the decree also provided that any person interested may file objections to the allowance of said claims on or before February 10, 1909. A notice was duly published to the creditors to file claims but no notice was published to the stockholders to file objections. Therefore, the stockholders were not advised of the proceedings and did not have an opportunity to object to any of the claims of the creditors within the period named.

IX. That the management of the defendant corporation during the five years last past shows a total disregard for the rights of the minority stockholders. That the minority stockholders have the right to demand and in their behalf a demand is hereby made for full, complete, and unrestricted access to all books, papers, accounts, documents, and records belonging or in any wise pertaining to the defendant corporation, before the rights of the minority stockholders are foreclosed; and that the confirmation of the pretended sale of defendant's property

to W. W. Black and Frank L. Bell, whom the minority stockholders verily believe aided and assisted in placing the defendant corporation in its present condition, be postponed and deferred until all books, papers, accounts, documents and records belonging to the defendant corporation or pertaining in any wise to the management thereof are produced and the minority stockholders have an opportunity to inspect them.

X. That W. W. Black, resident trustee of defendant corporation has failed and refused to produce for inspection (although requested so to do) the contract entered into on or about June 14, 1904, between W. W. Black and H. W. Holmes and the Northern Pacific Railway Company wherein said company agreed to convey when patented the north half of section 1, township 27 N. range 10 East W. M.

XI. That the said W. W. Black has failed and refused to produce for inspection (although requested so to do) the minutes of the proceedings of the board of trustees of defendant corporation since August 20, 1904.

XII. That the defendant's properties are exceedingly valuable, and the price at which they were sold or attempted to be sold on March 20, 1909, is absurdly low, for the mining claims have valuable standing timber thereon which experts value at $40,000 according to the circular issued by Frank L. Bell on November 16, 1908, a copy of which is attached to the affidavit made and filed herein by said Bell.

Dated at Everett, Wash., March 30, 1909.

Respectfully submitted,

SCHUYLER DURYEE,

Attorney for Protestant.

Service admitted March 31, 1909.

JOHN B. FOGARTY, Receiver.

Filed Mar. 31, 1909. JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

NOTICE.

To Nicholas Rudebeck, L. T. Reid and Milo A. Root and Schuyler Duryee, their Attorneys.

You and each of you are hereby notified that the above named plaintiff, Frank L. Bell, by his undersigned attorney will on Monday, April 5th, 1909, at the hour of 10 o'clock A. M. or as soon thereafter as counsel can be heard, before the Hon. George A. Joiner, sitting as Presiding Judge of the above entitled Court, at the Superior Court Room of the Court House of Snohomish County, Washington, bring on for trial and determination the exceptions of the above named parties to the Receivers return of sale in the above entitled action, and will at said time and place apply to the Court for an order approving and confirming said Receivers Sale and ordering the Receiver of above named Defendant to convey all of the property sold by the Receiver to the bidders at said sale.

JOHN SANDIDGE,
Attorney for Plaintiff.

Last pleading served. Exceptions to sale.

Attorneys:

For Plaintiff, John Sandidge.
For Defendant, D. W. Locke.
For Objectors, Milo A. Root and Schuyler Duryee.

Issue upon exceptions to Receivers Sale.

Service of a copy of the above notice is hereby acknowledged, this April 1st, 1909.

SCHUYLER DURYEE,
Attorney for L .T. Reid.

MILO A. ROOT, by O. D.,
Attorney for N. Rudebeck.

JOHN B. FOGARTY, Receiver.
D. W. LOCKE.

Filed April 1, 1909:

JOHN R. DALLY, County Clerk.

In the Superior Court of the State of Washington in and for the County of Snohomish.

FRANK L. BELL, Plaintiff,

vs.

SUNSET COPPER MINING COMPANY, a Corporation, Defendant.

No. 9510.

ORDER CONFIRMING SALE.

This cause coming on regularly for hearing in open Court, this day on the motion of Frank L. Bell, the above named plaintiff, for an order confirming the sale of all the property belonging to said defendant, made on the 20th day of March, 1909, and upon said hearing the said plaintiff appearing by his attorney, John Sandidge, and the defendant appearing by its attorney, D. W. Locke, and Nicholas Rudebeck, one of the objectors to the confirmation of such sale, appearing by his attorney, Milo A. Root, and L. T. Reid, another of the objectors to the confirmation of such sale, appearing by his attorney, Schulor Duryee, and the Receiver herein, J. B. Fogarty, Esq., appearing in person, and after considering the affidavits filed by the respective parties and after hearing the arguments of counsel, and being fully advised in the premises, it appearing to the Court that said sale was regularly made and fairly conducted and that the same should be confirmed, and that the court being now in all things fully advised in the premises, it is hereby ordered, adjudged and decreed that said sale and said proceedings be and the same are hereby confirmed.

It is further ordered, adjudged and decreed that the Receiver of above named defendant be and he is hereby directed to execute and deliver to Frank L. Bell and W.

W. Black, the purchasers at said sale, proper and legal conveyances for said property sold said parties by said Receiver on the 20th day of March, 1909.

Done in open Court this 5th day of April, A. D. 1909.

GEO. A. JOINER, Judge.

Filed Apr. 5, 1909. JOHN R. DALLY, County Clerk.

Indorsed: Plaintiffs Exhibit B. United States District Court, Western Dist. of Washington. Filed Apr. 21, 1914.

[Plaintiff's Exhibit P]

Article No. 13637 Certified Copy No. 9212

United States of America, The State of Washington, Department of State.

To all to Whom These Presents Shall Come:

I, I. M. Howell, Secretary of State of the State of Washington and custodian of the Seal of said State, do hereby certify that I have carefully compared the annexed copy of the amended

ARTICLES OF INCORPORATION OF THE SUNSET COPPER MINING COMPANY

with the original copy of said amended Articles of Incorporation now on file in this office, and find the same to be a full, true and correct copy thereof, and of the whole of said original, together with all official endorsements thereon. And I further certify that the said amended Articles appear to have been duly and regularly filed in this office, according to law, and that the same are of a genuine, valid and subsisting character, and that this certificate is in due form, and by the proper officer having the legal custody of said original and the requisite official knowledge relative thereto.

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Washington. Done at the Capitol, at Olympia, this 15th day of April, A. D. 1914.

(SEAL) I. M. HOWELL,
Secretary of State.

By J. GRANT HINKLE,
Assistant Secretary of State.

Comp'd M-G-A-O To S-M-C
No. 13637

CERTIFICATE AS TO THE INCREASE OF THE CAPITAL STOCK OF THE SUNSET COPPER MINING COMPANY, A CORPORATION.

This is to Certify, That a meeting of the stockholders of the Sunset Copper Mining Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, was held at the office of said company in the City of Everett, State of Washington, the principal place of business of said company, at 2 o'clock P. M. on August 22, 1903, pursuant to a notice of which the following is a copy:

NOTICE OF STOCKHOLDERS MEETING.

Notice is hereby given that a special meeting of the stockholders of the Sunset Copper Mining Company will be held at the office of Holmes and Husted, rooms 15 and 16 Colby Building, in the City of Everett, Snohomish County, Washington, on the 22nd day of August, 1903, at 2 o'clock in the afternoon for the purpose of voting upon a question of increasing capital stock of said Sunset Copper Mining Company from two million shares to three million shares and for the transaction of such other business as may come before the meeting.

Dated this 25th day of June, 1903.

HENRY W. HOLMES,
JOHN E. McMANUS,
W. W. BLACK.

All the trustees of the Sunset Copper Mining Company, which notice was signed by all the trustees of said company and was published in Everett, Snohomish County, Washington, as is shown by the proof of publication hereto annexed and marked Exhibit "A."

There were presented and represented 1,420,199 shares of the capital stock of said Sunset Copper Mining Company, 68,000 shares present; 1,352,199 shares present by proxy, 1,420,199 shares being more than two-thirds (2/3) of the two million shares of the capital stock of said company.

It is further certified that at said meeting the following resolution was made, seconded and carried:

Resolved that the capital stock of the Sunset Copper Mining Company be increased from the present amount of two million shares to three million shares; said increase be divided into one million shares of the par value of One Dollar each.

Said resolution having received 1,420,199 votes in favor of said resolution, said votes being cast by the holders of 1,420,199 shares of the capital stock of said company cast by the holders of said stock in person or by proxy. The said stock being more than two-thirds 2/3 of the entire capital stock of said company. No votes were cast against said resolution and the resolution was duly declared carried.

A motion was duly made, seconded and unanimously carried directing the president and secretary of said meeting to make and file this certificate as required by law and the trustees of said corporation were by motion unanimously carried to certify to said certificate as required by law. It was further represented and shown to said meeting that the capital stock of said company, to-wit: Two million shares of the par value of One dollar each had been fully paid for by the conveyance of mining claims and the payment of certain moneys and the performance of certain labor and services and that said two million shares of said par value of one dollar each have been paid for. It was further shown and represented to said meeting that there were no outstanding debts or liabilities of said company.

We certify that the foregoing facts are true and correct.

JOHN C. DENNY,
President of said Stockholders meeting.

H. W. HOLMES,
Secretary of said stockholders meeting.

Subscribed and sworn to before me this 22nd day of August, 1903.

EARL W. HUSTED,
Notary Public in and for the State of Washington, residing at Everett, Snohomish County, Washington.

EARL W. HUSTED
Notary Public
State of Washington
Commission Expires
June 17, 1906

We, the undersigned, being all of the trustees of the Sunset Copper Mining Company, a corporation duly organized and existing under and by virtue of the laws of the State of Washington, do hereby certify that the foregoing certificate is true and correct statement of the proceedings had at the meeting of the stockholders of Sunset Copper Mining Company held on August 22, 1903, for the purpose of increasing the capital stock of said Sunset Copper Mining Company from two million shares of the par value of One Dollar each to three million shares of the par value of One Dollar each, and that the foregoing certificate is in every respect true and correct.

Dated at Everett, Wash., Aug. 22, 1903.

JOHN C. DENNY,

W. W. BLACK,

H. W. HOLMES,

W. G. SWALWELL,

E. M. METZGER.

All of the Board of Trustees of the Sunset Copper Mining Company.

In the matter of the Sunset Copper Mining Company.

State of Washington, County of Snohomish, ss.

I, G. A. Church, being first duly sworn on oath depose any say: That I am the head clerk of the Everett Weekly Herald, a weekly newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State, and that the Notice of Meeting, a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper once each week for a period of eight consecutive weeks, beginning on the 27th day of June 1903 and ending on the 15th day of August 1903, both dates inclusive, and that said newspaper was regularly distributed to its subscribers during all of said period.

G. A. CHURCH.

Subscribed and sworn to before me this 21st day of August, 1903.

JAS. B. BEST

Notary Public
State of Washington
Commission Expires
March 11, 1906

JAS. B. BEST,

Notary Public in and for the State of Washington, residing at Everett, Snohomsh County.

NOTICE OF STOCKHOLDERS MEETING.

Notice is hereby given, That a special meeting of the stockholders of the Sunset Copper Mining Company will be held at the office of Holmes & Husted, in rooms 15 and 16, Colby building in the city of Everett, Snohomish county, Washington, on the 22nd day of August, 1903, at two o'clock in the afternoon for the purpose of voting upon the question to increase the capital stock of said Sunset Copper Mining Company from two million shares its present amount, to three million shares and for the transaction of such other business as may come before the meeting.

Dated this 25th day of June, 1903.

HENRY W. HOLMES,
JOHN E. McMANUS,
W. W. BLACK,

All of the trustees of the Sunset Copper Mining Company.

(Endorsed)

State of Washington, ss.

Filed for record in the office of the Secretary of State Oct 7 1903. Recorded Book 39 Page 462 Domestic Corporations.

SAM H. NICHOLS,

Secretary of State.

Indorsed. Case No. 2112 Plaintiff's Exhibit P. United States District Court Western Dist. of Washington, Buchler vs. Black et al., Filed Apr. 22, 1914. Frank L. Crosby, Clerk, By S. E. Leitch, Deputy.
Admitted.

[Plaintiff's Exhibit Q]

United States of America, State of Washington, Office of The Secretary of State.

Order No. 9232.

I, I. M. Howell, Secretary of State of the State of Washington, do hereby certify that the records of this office show that the last license fee paid by the Sunset Copper Mining Company, of Everett, Washington, paid said company up to June 30th, 1905.

In testimony whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Washington, at the Capitol, in Olympia, this 21st day of April, A. D. 1914.

(SEAL) I. M. HOWELL,
Secretary of State.

By J. GRANT HINKLE,
Assistant Sec'y of State.

Indorsed: Plaintiffs exhibit Q. United States District Court, Western Dist. of Washington, Buchler vs. Black, et al. Filed Apr. 22, 1914. Ruling Reserved.

[Excerpt from Defendants' Exhibit No. 7]

Everett, Wash., Jan. 15, 1904.

G. J. Buchler, Esq.,
Philadelphia, Pa.

Dear Sir:

Your letter of the 9th inst. has just been received. In reply allow me to say that I thank you for the confidence you showed in the Board of Trustees by sending me your proxy directing me to vote for the entire old board.

As you know the Sunset Copper Mining Company became indebted in a very large sum and that for several years it was in a condition of stagnation and there really was no market for stock here at any price. It could not be sold for 2c a share in the open market. Everybody was afraid that the property would be lost and the company could not raise money to pay the debts. When Mr. W. H. Baldwin appeared on the scene he made a proposition to take the treasury stock that was then on hand at 2½c a share which the board of trustees finally accepted and all the debts were paid with the money received except probably two or three hundred dollars of floating debts which has not yet been adjusted and settled. The facts are that it was supposed at the time that all the debts were paid but in investigating the old matters we have found some small claims which have not been paid, probably amounting to two or three hundred dollars. * * *
Ans. 2/7/04.

W. W. BLACK.

Indorsed: Defendants exhibit 7. United States District Court, Western Dist. of Washington, Buchler vs. Black et al. Filed Apr. 22, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy. Admitted.

[Defendants' Exhibit 9]

H. W. HOLMES
Attorney

Rooms 15 and 16, Colby Building
Everett, Wash.

Feb. 18, 1909.

Mr. G. J. Buchler,
2163 N. 9th St.
Phila., Pa.

Friend Buchler:

Your letter of Feb. 13th came to hand this morning. The Sunset property is to be sold by receiver on the 20th of March to pay debts. I am unable to do a thing here.

Bell got a judgment in the federal Court in New York for something over twelve thousand Dollars. Ten Thousand of which was for services as attorney. Why did you permit this? We knew nothing about it until a transcript was sent here. There must have been an agreement by him with McNutt. He made service by serving the company through McNutt and then no one appeared for the Company and he took a default judgment. My hair was red when I learned this, but I was helpless in the matter. McNutt has a claim in for services and office rent for about $1,200.00. I have Rudebeck interested and he is trying to do all he can to save the property for stockholders but it looks to me that we have lost out. I think suit must be brought in New York, if any, against Mrs. Baldwin or Bell and you know I have no money for that. I was waiting for Bell to put in his claim here. I would fight it, but he now has it in judgment in the New York Court and I am out.

I am investigating an irrigating proposition in Idaho, and may have something to submit to you later, but may not be able to tie it up at all. I would consider this better than mining. You having been in the West know something about it.

I think you could go after McNutt for burning the stock book. That would indicate fraud on the very face of it. But, I think we are out unless we pay the assessment stated in the circular sent out by Bell I never saw one of the circulars until handed me by a friend in Seattle. McNutt is a thief and as big a son one as Baldwin. I am not very good natured these days as a result of the Sunset affairs. I simply can not write.

Very truly yours,

H. W. HOLMES.

Feby 23d 1909

Indorsed: Case No. 2112, Defendants Exhibit 9. United States District Court, Western Dist. of Washington. Buchler vs. Black et al. Filed Apr. 22, 1914, Frank L. Crosby, Clerk, by S. E. Leitch, Deputy. Admitted.

[Defendants' Exhibit 13]

Frank L. Bell,
Walter W. Wait,
F. D. Morehouse,
Attorneys and Counsellors.

Village Hall

Glens Falls, N. Y. February 11th, 1905.

Mr. G. J. Buchler,

Philadelphia, Pa.

Dear Sir:

I have your letter of yesterday and have noted the questions you ask of me.

To be exact about the debts the Sunset Company owes Mrs. Baldwin $30,813.69, with interest from December 31st, last. H. W. Holmes claims that the company owes him $1,000. for legal services but my judgment is this can be successfully defended. Outside of these two matters I think $1,000. additional will cover everything.

The flume is 4,200 feet long and cost something over $4,000. I cannot give you the cost of the compressor, saw mill, or Electric Plant. As to these matters I can say this, Last January (1904) after all of these improvements had been completed Mr. Black send on the cost and Mr. Baldwin was surprised and disappointed, and declined to pay for such expense. The result was that I went to Washington with him and we looked over the improvements and became thoroughly satisfied myself that the money had been well and economically expended. The flume is a splendid piece of work and could not have been bettered in price or anything else. The same is equally true of the other work.

The Sunset vein has been opened by three main surface workings. The Upper Tunnel is 250 long and cuts the vein at a depth of 130 feet below the surface, and has been drifted on for 100 feet; crosscuts were made on this drift and showed the vein to be 15 to 18 feet wide, with 1 & 1/2 feet of solid Pyrites of Copper and iron along the foot wall, and averages 5% clear across the vein.

The lower tunnel is 325 feet below the upper one, is 560 feet long and the vein is 18 feet wide all in ore. A drift has been run on this 100 feet all in ore and for the whole distance the copper averages 7%.

No work has been done on the Copper King but the surface indications show it to be much better than the Sunset vein.

I am giving you the above from what Mr. Clark gives me, and from personally having been over the ground what I believe to be the exact truth.

The company has spent something over $4,000. in relocating the old claims and also locating new claims. I found on looking up the old locations that they were very crude and concluded it was necessary to have the work done that the claims could surely be held. It was also necessary to do this for to make application for the patents and these applications are now on file. We also have a contract from the Northern Pacific Railway Co., for a deed for 320 acres which covers all the improvements and veins worked; this protects the property beyond question.

The stock of the company was increased before Mr. Baldwin bought in, and the 200,000 shares of additional stock was sold to him in the deal and the money used to pay back debts. No minority stockholder can complain of this for the company's books show that the original issue of stock was at from 1c to 20c. He who is in the same boat has no redress and one who purchases Mr. Baldwin's stock is protected from any action in behalf of any stockholder.

I desire to assure you that in my judgment every dollar that has been expended on this mine since Mr. Baldwin purchased his stock has been wisely spent and not a penny wasted. The only regret is that he did not have the money to continue the work.

It is unnecessary to consider the ability or honesty of Mr. Baldwin for if you and your friends should buy him out he will be entirely out of the company, with no stock, and you can proceed as you wish.

The property is certainly a cheap one at the price, and if you can interest anyone to buy who has the money to go on with the necessary work, I feel there can be no doubt about the outcome. We have several parties considering the purchase of the Baldwin interest and the first to accept will get it.

Mr. Baldwin and his wife hold the controlling interest in the company, and you can have all of their stock, and debts owing to them from the company, for $175,000. provided, only, that you elect to purchase the same before anyone else buys.

I have a power of attorney to sell this interest, and if you can make the sale I will agree to pay you a commission, the same to be named by me before the transfer is made.

Very truly yours,

FRANK L. BELL.

Ans. 3/26/05

Indorsed: Case No. 2112 Defendants Exhibit 13, United States District Court, Western Dist. of Washington, Buchler vs. Black et al. Filed Apr. 22, 1914. Frank L. Crosby, Clerk, By S. E. Leitch, Deputy. Admitted.

[Defendants' Exhibit 17]

H. W. Holmes

Lawyer
Rooms 15-16 Colby Building
Sunset Phone 1189

Everett, Washington

Dec. 14th, 1908.

Mr. G. J. Buchler,

2163 N. 9th St.

Philadelphia, Pa.

Friend Buchler:

Yours of Nov. 18th. at hand and contents noted. That part of your letter in regard to my being a drunk etc. makes me laugh. I don't think myself that I am what you would call a popular man, but I have a great many good friends here. As to the drunk part Frank L. Bell took more booze out of the State of Washington, than I ever drank in all my life and he was not here much more than 10 days at that.

I send you a clipping from the P-I a Seattle paper which tells the situation of the Sunset. I suppose it will be sold to pay debts now.

I called on Mr. Judd and asked him if he had anything for me in regard to Sunset or other matters and he said no. So I let the matter drop.

As to the property of Mr. B—— I will say you have asked me a hard question. He is a large stock holder in the Sunnyside Land Co. This Company buys, sells and owns real-estate and loans money and I have no way of

knowing how much stock he has. He is also interested in the Glenwood Land Co. He owns the Verginia Hotel in his name worth $30,000.00 and his home worth about $10,-000.00.

Bell is stringing you. Black had an option on the Baldwin interest and that was all he sold. The Company had nothing to do with it unless the property injured or something of that kind. You can see by the inclosed slip that Bell talks one thing and does another. He has no more reliability than the late W. H. Baldwin. Did you want me to get the legal description of these properties. I thin B—— is worth at least $100,000.00. No one can buy any of the Sunnyside Land Co.'s stock. It is held by three persons and none of it for sale.

McGinity is still in Oregon and I understand is in the Telephone business. Just as big talking as ever. He could sell out for $5000.00 but wanted seven thousand.

I did not get the mining property in Nevada that I expected and the party who was going to secure it for me came to me later and wanted to lease me some of his claims, but I would not listen to that. I am trying to get a prospector to go there or to Alaska. I do not know as he will go yet.

I told Black that I would turn the $200.00 I owed on the option, toward the $1000.00 I sued the Company for one year ago, but of course I could not do that as the option was on the Baldwin interest only and if any body owes me it is the company. I think I talked this matter over with you so you know where I stand. Let me hear from you often and I will get what you want if I can. I think we are up against the real thing now, but Bell must put his claim in and have it proved up and I will be on the spot when that is done.

Very truly yours,

Ans December 30, 08 H. W. HOLMES.

Indorsed: Case No. 2112. Defendants Exhibit 17. United States District Court Western Dist. of Washington. Buchler vs. Black et al. Filed Apr. 22, 1914. Frank L. Crosby, Clerk. By S E. Leitch, Deputy. Admitted.

[Defendants' Exhibit 21]

State of Washington, Department of State, Office of the Secretary, Olympia.

I. M. Howell,

Secretary of State.

J. Grant Hinkle,

Asst. Secy. of State.

Apr. 16, 1914.

Robert McMurchie,

407 Amer. Bank Bldg.,

Everett, Wash.

Dear Sir:

In reply to yours of the 15th inst. re status of the Sunset Copper Mining Company, you are advised the records of this office show this company stricken Aug. 23, 1909, for failure to pay annual corporation license fees since the year 1905, and it has no legal corporate existence in this state, at this time.

A certificate to this effect, under seal of this office may be had upon receipt of the statutory fee of $2. in M. O. or bank draft.

Very truly yours,

Dic. JGH/TMB I. M. HOWELL,

Secretary of State.

Indorsed: Defendants exhibit 21. United States District Court Western Dist. of Washington, Buchler vs. Black et al., Filed Apr. 23, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy. Admitted.

[Defendants' Exhibit 28]

This Indenture, Made this 1st day of July, 1908, between the Sunset Copper Mining Company, a corporation organized and existing under the laws of the State of Washington and having its principal business at Everett in said State, as party of the first part, and Hon. William W. Black, of Everett, Washington, and Frank L. Bell of Glens Falls, N. Y., as parties of the second part, and Hon. William W. Black of Everett, Washington, Ellen C. Baldwin and Frank L. Bell of Glens Falls, N. Y., as parties of the third part,

Whereas, The party of the first part is now indebted to divers persons for labor and supplies used by it in watching and doing assessment work on its property since January 1st, 1908, and it is necessary that it borrow further money with which to do the balance of the assessment work for said year 1908 to the end that it shall legally hold and own its mining property by the doing of such assessment work, and

Whereas, The parties of the second part have offered and are now willing to loan the party of the first part money to be used in doing such assessment work and on account thereof, but without liability upon their part to loan and particular sum or sums of money for such account.

Now, This Witnesseth: That the said party of the first part, in consideration of the premises, and of the sum of One & 00/100 dollars, to be paid, the receipt of which is hereby acknowledged, and other good and valuable consideration to it moving from the said parties of the second part, does hereby grant, release, convey, sell, assign, transfer and set over unto the said parties of the second part, their and each of their heirs and assigns forever, the North ½ of Section No. 1, Township 27, Range 10, East of Willamette Principal Meridian, County of Snohomish and State of Washington, containing 320 acres of land, more or less, and all other property, real, personal or mixed, and all mining claims and interested therein, situate in the Index Mining District, Snohomish County, Washington, and all property wheresoever situate.

Also all real and personal property, rights, privileges, franchises, mining claims and property whatsoever which it now owns or which it shall at any time hereafter acquire.

This Grant is intended as security to the parties of the second part, and each of them, for any money or moneys which they shall loan or advance to the party of the first part in doing assessment work or used for other lawful purposes for the benefit of the party of the first part, and for any and all moneys which the parties of the second part, or either of them, shall expend upon doing assessment work on the mining claims of the party of the first part and for supplies and materials furnished or supplied by them in doing such work, provided that in any one year said parties of the second part shall not expend upon such work and for supplies and materials purchased or furnished by them to exceed the sum of $4,000. but the time between now and January 1st, 1909, shall count as one year.

The party of the first part agrees to give to the parties of the second part its notes for all moneys which shall be loaned it by them under this indenture and to pay all moneys which the parties of the second part shall expend in doing such assessment work and for supplies and materials furnished by them. All moneys loaned by the parties of the second part hereunder or expended by them on such assessment work and for supplies and materials furnished by them shall be due and payable upon demand and shall draw interest at the rate of six per centum per annum from the date when loaned and expended for the party of the first part. Upon such money and interest being fully paid this grant shall be void otherwise to remain in full force.

In case default shall be made in the payment of the principal sum hereby intended to be secured, and secured, or in the payment of the interest thereon, or any part of such principal or interest as above provided, then it shall be lawful for the parties of the second part, or either of them, his or their heirs, executors, administrators or assigns, at any time thereafter to sell the property here-

by granted and assigned or any part or parts thereof in the manner provided by law, and out of all the moneys arising from such sale or sales to retain the amount then due for principal and interest, together with the costs and charges of making such sale or any action on this indenture, and the surplus, if any there be, shall be paid by the party making such sale, on demand, to the said parties of the first part, its successors or assigns.

And Whereas, The said parties of the third part are now creditors of the party of the first part, and hold its obligations in the way of notes, mortgages or judgments or some one or more thereof, or have an interest in or are interested in such claims; and also that they are large stockholders in the party of the first part or are interested in a large portion of its capital stock and are thereby interested in having the mining claims and property of the first part held by fully doing the assessment work required each year to be done, and to such end and for the purpose of inducing the parties of the second part to loan money under this indenture or to expend money in doing such assessment work and furnishing said company with supplies and materials, the said parties of the third part do hereby agree to and with each other, that any money or moneys loaned to said company by the party of the second part, or either of them, under this indenture, and all moneys which they or either of them shall expend in doing such assessment work or in furnishing said company with supplies and materials, shall by said company be paid before any claims, notes, judgment or mortgages now held by the parties of the third part, or either or them, or in which they or either of them have an interested, and that the lien created by this indenture shall be ahead of and prior to the lien of any mortgage, judgment or other claim of the parties of the third part or any or either of them. The provisions contained in this paragraph are agreed to by all of the parties to this indenture and each of said parties agree to faithfully and honestly keep and perform the same.

In Witness Whereof, the party of the first part has caused these presents to be executed in its corporate name, and its corporate seal to be hereunto affixed, and the parties of the second and third part have hereunto set their hands and seals, the day and year first above written to triplicate copies hereof.

(SEAL)

SUNSET COPPER MINING COMPANY,

By H. C. McNutt, President.

A. G. SELLINGHAM,

W. W. BLACK,

E. M. METZGER,

Trustees.

W. W. BLACK, (L. S.)

FRANK L. BELL, (L. S.)

Parties of the Second Part.

ELLEN C. BALDWIN (L. S.)

W. W. BLACK. (L. S.)

FRANK L. BELL. (L. S.)

Parties of the Third Part.

State of New York, County of Warren, ss.

On this 7th day of July, 1908, before me personally came and appeared Henry C. McNutt to me known to be the president of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said mortgage or instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my seal the day and year first above written.

FRANK D. MOREHOUSE,

Notary Public.

State of New York, County of Warren, ss.

Henry C. McNutt, being first duly sworn on oath deposes and says, that he is the president of the Sunset Copper Mining Company, the above mentioned mortgagor, and makes this affidavit in behalf of said mortgagor; and that the above and foregoing mortgage is made in good faith and without any design to hinder, delay or defraud creditors or any creditor.

Subscribed and sworn to before me this 7th day of July, 1908.

H. C. McNUTT,

FRANK D. MOREHOUSE,

Notary Public.

State of New York, County of Warren, ss.

On this 24th day of July, 1908, before me the subscriber personally came Ellen C. Baldwin and Frank L. Bell to me known and known by me to be two of the individuals described in and who executed the foregoing instrument, and they thereupon severally acknowledged to me that they had executed the same.

FRANK D. MOREHOUSE,

Notary Public.

State of Washington, County of Snohomish, ss.

On this.....day of.....1908, before me the subscriber personally came William W. Black to me known and known by me to be the individual described in and who exeuteed the foregoing instrument and he thereupon acknowledged to me that he had executed the same.

Indorsed: Mortgage. Dated July 1st, 1908. Defendants Exhibit 28. United States District Court, Western Dist. of Washington, Buchler vs. W. W. Black, et al. Filed Apr. 23, 1914. F. L. Crosby, Clerk. Adm.

[Excerpt from Defendants' Exhibit 15]

Glens Falls, N. Y. G., Oct 3, 1907.

G. J. Buchler, Philadelphia, Pa.

Dear Sir:—

Yours of the second at hand and in reply would say, The Sunset Copper Mining Company has never signed any contracts or agrements with the Trout Creek Copper Company.

We have never got out any annual reports since I have been interested in the Company.

I do not know exactly what the expeniture of the thirty thousand dollars was for. But as I understand it about five thousand was for machinery and the balance was for repairing rail roads and work in the mines. No doubt Mr. H. E. Heller of Index, Washington, assistant secretary of the Sunset Copper Mine could give you full particulars.

You asked me how the books of a Washington company should be in Glens Falls, N. Y. All the Companys books from the time that the company was orginized up to October 1905 are in Washington. I have never seen them. Since October 1905 we have kept a set of books here at this office, as the officers are here.

Yours truly,

H. C. McNUTT,

Ans. Oct. 14th, copy attached.

Indorsed: Defendant's exhibit 15. United States District Court, Western Dist. of Washington, Buchler vs. Black, et al. Filed Apr. 22, 1914. Frank L. Crosby, Clerk, by S. E. Leitch, Deputy. Admitted.

In the District Court of the United States for the Western District of Washington. Northern Division.

(In Equity)

No. 2112

Stipulation

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

It is stipulated by and between O. C. Moore and George H. Walker, solicitors for complainant, and Frank L. Bell, one of the defendants, and heretofore appearing as his own solicitor, that Fletcher Lewis of Seattle, Washington, an attorney and solicitor of this court be, and he is hereby authorized to accept service or notice on behalf of said Frank L. Bell of all papers and proceedings in which service or notice may be necessary to perfect an appeal by said complainant to the United States Circuit Court of Appeals for the Ninth Circuit, provided that all such notices shall be timely served.

O. C. MOORE.

GEORGE H. WALKER.

FRANK L. BELL.

Indorsed: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 7, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States, for the Ninth Circuit Western District of Washington, Northern Division. (In Equity).

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Notice of Lodgment of Statement of Facts

To W. W. Black and Frank L. Bell, defendants in the above entitled action, and to Messrs. Robert McMurchie, J. A. Coleman and Lloyd L. Black, your attorneys:

You, and each of you, are hereby notified that the complainant has prepared and lodged in the office of the clerk a condensed statement of such portions of the evidence introduced at the trial of the above cause as is necessary and essential to a review of the questions which complainant proposes to present on appeal as grounds for the reversal of the final decree made and entered herein by the judge of said court on the 23rd day of June, 1914. You are hereby further notified that the complainant will, on the 21st day of December, A. D. 1914, at the hour of 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, apply to the Hon. Jeremiah Neterer, Judge of said court, at his courtroom in the City of Seattle, Washington, for the approval of said statement.

O. C. MOORE, and
GEORGE H. WALKER,

Counsel and Solicitors for Complainant.

Received a copy of the within Notice of Lodgment together with a copy of proposed condensed statement of facts, due and timely service whereof is hereby admitted this 7th day of December, 1914.

R. McMURCHIE.

L. L. BLACK,

Solicitors for Defendant Black.

FLETCHER LEWIS,

Solicitor for Defendant, Bell.

Indorsed: Notice of Lodgment of Statement of Facts. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 7, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States, for the Western District of Washington, Northern Division.

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, Defendants.

No. 2112

Assignments of Error

Comes now the complainant in the above entitled cause and says that in the decree herein made and entered on the 23rd day of June, 1914, there is manifest error and files the following assignments of errors committed and happening in the said cause upon which he will rely in his appeal from said decree.

I.

The court erred in holding that there was no evidence before it of any collusion between the defendants Black and Bell with relation to the conduct of the business of defendant company.

II.

The court erred in holding that there was no evidence before it to justify the conclusion that either defendants Black or Bell exercised any undue influence of any character in any of the proceedings referred to in the complaint.

III.

The court erred in holding that there was no evidence before it that any information with relation to the conditions or status of defendant company's property was at any time withtheld from the plaintiff.

IV.

The court erred in holding that the plaintiff was guilty of laches and was thereby precluded and barred from maintaining this suit.

V.

The court erred in holding that the action of the state court in approving the claims filed with the receiver by defendants Black and Bell over the objection of a minority stockholder, other than the plaintiff herein, is res adjudicata of this suit.

VI.

The court erred in holding that the confirmation of the receiver's sale of the assets of the defendant company over the objection of a minority stockholder, other than the plaintiff herein, is res adjudicata of this suit.

VII.

The court ered in refusing to hold defendants Black and Bell, or either of them, as trustees of the property of defendant corporation bid in by them at the receiver's sale, for the use and benefit of said corporation and its stockholders.

VIII.

The court erred in holding valid the proceedings had in the suit brought by defendant Frank L. Bell in the Superior Court of Washington for Snohomish County against the Sunset Copper Mining Company, wherein the assets of said company were sold by the receiver under order of court and purchased by defendants Frank L. Bell and W. W. Black.

IX.

The court erred in holding valid the receiver's sale of the assets of defendant corporation had in the foreclosure suit brought by defendant Bell in the Superior Court of Washington for Snohomish County.

X.

The court erred in holding that the evidence introduced at the trial on behalf of complainant was insufficient to entitle complainant to any relief.

XI.

The court erred in holding that complainant's bill was without substantial equity and in dismissing the same and denying the relief therein prayed for.

XII.

The court erred in denying complainant's petition for a rehearing.

O. C. MOORE and
GEORGE H. WALKER,
Solicitors for Complainant.

Received a copy of the within Assignment of Errors due and timely service whereof is hereby admitted this 7th day of December, 1914.

L. L. BLACK and
R. McMURCHIE,
Solicitors for Defendant Black.

FLETCHER LEWIS,
Solicitor for Defendant Bell.

Indorsed: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 7, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. (In Equity).

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Petition for Appeal

The above named complainant, G. J. Buchler, conceiving himself to be aggrieved by the final decree and order of court made and entered in this cause on the 23rd day of June, 1914, hereby appeals therefrom, and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit and prays that his appeal be allowed and that a transcript of so much and such portions of the record, proceedings and papers, upon which said final decree, order and judgment was made, as may be necessary and essential to a review and decision of the questions presented by this appeal, duly authenticated, be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

And now, at the time of the filing of this petition for appeal, the complainant files an assignment of errors, setting forth separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner will ever pray.

G. J. BUCHLER,
Complainant,

By O. C. MOORE and
GEORGE H. WALKER,
His Solicitors.

Service of the within Petition for Appeal, by receipt of a true copy thereof admitted this 7th day of December, A. D. 1914.

L. L. BLACK and
R. McMURCHIE,
Solicitors for defendant Black.

FLETCHER LEWIS,
Solicitor for defendant Bell.

Indorsed: Petition for Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 7, 1914. Frank L. Crosby, Clerk. By E. M. L. Deputy.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. (In Equity).

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Order Allowing Appeal.

On reading and filing complainant's petition for an appeal and assignment of errors in the above entitled cause, it is hereby ordered that an appeal be and is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit from the order and decree heretofore rendered and entered herein on the 23rd day of June, 1914, and that a certified transcript of so much and such portions and parts of the record, testimony, exhibits, affidavits and proceedings herein, upon which said decree was based, as may be essential to a review and decision thereof on this appeal, duly authenticated, be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the bond on appeal be, and is hereby fixed at the sum of $300.00.

Done in open court this 22nd day of December, A. D. 1914.

JEREMIAH NETERER, Judge.

Indorsed: Order Allowing Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 22, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. (In Equity).

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Bond on Appeal

Know all men by these presents, That we, G. J. Buchler, as principal and The American Surety Company, of New York, a corporation organized and existing under and by virtue of the laws of the state of New York, doing business in the state of Washington under and by virtue of the laws thereof, as surety, are held and firmly bound to W. W. Black, Frank L. Bell and Sunset Copper Mining Company, a corporation, defendants above named in the sum of three hundred and no/100 Dollars, for the payment of which well and truly to be made, we bind ourselves jointly and severally, and each of our successors and assigns, firmly by these presents.

Signed, sealed and dated this 23rd day of December, A. D. 1914.

Whereas the above named complainant has prosecuted and appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse a decree rendered in the above entitled cause in the District Court of the United States for the Western District of Washington, Northern Division on the 23rd day of June, 1914,

Now Therefore, the conditions of this obligation are such that if the above named complainant, G. J. Buchler, shall prosecute said appeal to effect and answer all costs if he fails to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

G. J. BUCHLER,
By O. C. MOORE,
GEORGE H. WALKER,
His Solicitors.

(SEAL) AMERICAN SURETY COMPANY OF NEW YORK,
By EDWARD J. LYONS,
Its Resident Vice-President.

Attest: S. H. MELROSE,
Its Resident Ass't. Secretary.

The foregoing bond is approved, both as to form and sufficiency of surety, this 23rd day of December, A. D. 1914.

JEREMIAH NETERER,
Judge before whom said cause was tried.

Indorsed: Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 23, 1914. Frank L Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. In Equity.

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Citation. (Lodged Copy)

The President of the United States to W. W. Black and Frank L. Bell:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco within thirty (30) days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein G. J. Buchler is appellant and you are respondents to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States of America, this 22 day of Dec., A. D. 1914, and of the Independence of the United States the One Hundred and Thirty-eighth.

(SEAL) JEREMIAH NETERER,
United States District Judge.

Attest: FRANK L. CROSBY,
Clerk of said Court.

Service of the foregoing citation, by the delivery of a copy thereof, hereby admtited this 22 day of December, A. D. 1914.

ROBT. McMURCHIE and
LLOYD L. BLACK,
Solicitors for Respondent W. W. Black.

FLETCHER LEWIS,
Solicitor for acceptance of service for Respondent Frank L. Bell.

Indorsed: No. 2112. In the District Court of the United States for the Western District of Washington, Northern Division. G. J. Buchler, Plaintiff, vs. W. W. Black, Frank L. Bell and Sunset Copper Mining Company, a corporation, Defendants. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 22, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. George H. Walker and O. C. Moore, Attorneys for Complainant, 705-6-7 Central Bldg., Seattle, Wash.

In the District Court of the United States for the Western District of Washington. Northern Division.

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Order Enlarging Time to File Transcript

Now on this 13th day of January, 1915, upon motion of Solicitors for Complainant, and for sufficient cause appearing, it is ordered that the time within which the Clerk of this Court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 1st day of March, 1915.

JEREMIAH NETERER,
District Judge.

Indorsed: Order Enlarging Time to File Transcript. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Jan. 13, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States, for the Ninth Circuit, Western District of Washington, Northern Division. (In Equity).

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L. BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Præcipe

To the Clerk of said Court:

You will please prepare and have printed under your direction, in accordance with Act of Congress of February 13, 1911, Rule 31 of the United States Supreme Court, and the order thereon promulgated by the United States Supreme Court March 13, 1911, certify and transmit to the United States Circuit Court of Appeals for the Ninth Circuit the following records, proceedings and papers in the above entitled cause:

Bill of complaint omitting Exhibit "A" attached thereto; Subpoena on Bill of Complaint and Sheriff's Return thereon, filed March 28, 1912; Motion to Amend Bill of Complaint and Order permitting amendment, filed December 13, 1912; Answer of defendant Black, filed November 26, 1913;; Answer of defendant Bell filed December 29, 1913; Order entered on complainant's Motion to Strike, filed February 24, 1913; Stipulation filed January 17, 1914; Stipulation re proving record of Bell vs. Mining Company, No. 3554, U. S. Circuit Court for Northern District of New York, filed April 21, 1914; Decision of Judge Neterer on final hearing, filed May 18, 1914; Decree dismissing cause, filed June 23, 1914;

Also the following portions of Petition for re-hearing, filed June 23, 1914, to-wit: all of p 1; all of p 2 except the last paragraph thereof; that part of pp 9 and 10 beginning with the last paragraph on p 9 and ending on the 12th line of p 10; all of the last paragraph on p 11;

Decree and order denying petition for re-hearing;

Condensed Statement of Facts;

The following portions of complainant's Exhibit "B," to wit: pp 1-15 inclusive; p 18; pp 20-27 inclusive; p 40; pp 45-48 inclusive; pp 54-58 inclusive; p 61; p 75; pp 93-104, inclusive; and p 116;

Also complainant's Exhibit "P" and "Q";

Also the following portion of Defendants' Exhibit 7, to wit: First and second paragraphs thereof with the date and address, and the notation "Ans. 2/7/04" found at end of letter.

Also Defendants' Exhibits 9, 13, 17, 21 and 28; also that part of Defendants' Exhibit 15 which is letter from McNutt to Buchler dated October 3, 1907;

Stipulation filed December 7, 1914 appointing Fletcher Lewis solicitor to accept service for defendant Bell;

Also all papers and proceedings on appeal.

O. C. MOORE,
GEORGE H. WALKER,
Solicitors for Complainant.

Service of the foregoing Praecipe by receipt of a true copy thereof admitted this 22nd day of December, 1914.

ROBT. McMURCHIE and
LLOYD L. BLACK,
Solicitors for Respondent, Black.

FLETCHER LEWIS,
Solicitor for acceptance of service for Respondent, Bell.

Indorsed: Praecipe. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 22, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington. Northern Division.

G. J. BUCHLER, Complainant,

vs.

W. W. BLACK, FRANK L BELL and SUNSET COPPER MINING COMPANY, a Corporation, Defendants.

No. 2112

Certificate of Clerk U. S. District Court to Transcript of Record

United States of America, Western District of Washington, ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing printed pages numbered from 1 to 203, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, exhibits, and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by on behalf of the Complainant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to wit:

Clerk's Fee (Sec. 828 R. S. U. S.) for making record, certificate or return—557 folios at 15c ..... $ 83.55

Certificate of Clerk to transcript of record—3 folios at 15c ..... .45

Seal to said Certificate ..... .20

Statement of cost of printing said transcript, collected and paid 180.00

$264 20

I hereby certify that the above cost for preparing, certifying and printing said record amounting to.....$264.20 has been paid me by Messrs. O. C. Moore and George H. Walker Solicitors for Complainant.

I further certify that I hereby attach and herewith transmit the original Citation issued in this cause.

In witness whereof I have hereto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 18th day of February, 1915.

(SEAL) FRANK L. CROSBY, Clerk.